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ABSTRACT

This is a collection of background readings and opinions on immigration and refugee issues which was prepared by the Committee on the Judiciary of the United States Senate. The book's first section presents articles on the number of illegal immigrants and their impact on the United States. The second section outlines proposed solutions to the illegal immigrant problem. Past proposals are reviewed, enforcement and amnesty issues examined, and temporary worker programs discussed. In the last section readings related to immigration goals are presented which cover specific policy objectives, criteria for immigrants admission, and the administrative structure for the management and operations of immigration law and policy. (Author/APM)

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96th Congress }
2d Session }

COMMITTEE PRINT

SELECTED READINGS ON U.S. IMMIGRATION POLICY AND LAW

A COMPENDIUM

PREPARED AT THE REQUEST OF

SENATOR EDWARD M. KENNEDY, *Chairman*

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

FOR THE USE OF

THE SELECT COMMISSION
ON IMMIGRATION AND REFUGEE POLICY

PREPARED BY THE

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FOREWORD

Since the Select Commission on Immigration and Refugee Policy was established by Congress in late 1978, the Senate Judiciary Committee has attempted to support its work by making available the resources of its staff as well as the research capabilities of the Congressional Research Service (CRS) of the Library of Congress. In continuation of this effort, I asked CRS to collect in a single volume a full range of background readings and opinions on some of the hard issues facing the Commission—issues which will also face Congress and the American people in 1981 following the Commission's report.

Under the expert guidance of Joyce Vialet, a Specialist in Social Legislation in the Education and Public Welfare Division, CRS has compiled the following "Selected Readings on U.S. Immigration Policy and Law." It is a unique and otherwise unavailable set of material on American immigration policy. It not only collects wide-ranging views on current immigration problems, it also gives a historical perspective to them. It deals in a comprehensive fashion with the twin issues of what our Nation's immigration goals ought to be, as well as what we should do about illegal immigration. In short, it provides in a single volume an invaluable compendium of information.

Hopefully, these readings will assist the Commission, as well as the American public at large, in grappling with the complex and difficult immigration questions confronting our Nation today.

EDWARD M. KENNEDY,
Chairman, Committee on the Judiciary.

Congressional Research Service
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Washington, D.C. 20540

LETTER OF SUBMITTAL

September 17, 1980

Honorable Edward M. Kennedy
Chairman, Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

In response to your request, I am pleased to submit the following anthology entitled "Selected Readings on U.S. Immigration Policy and Law."

The anthology was prepared by Joyce Vialet, Specialist in Social Legislation, Education and Public Welfare Division. Assistance was provided by Stephen Powitz of the Library Services Division.

We appreciate this opportunity to be of assistance to the Committee on the Judiciary and the U.S. Select Commission on Immigration and Refugee Policy.

Sincerely,

Gilbert Gude

Gilbert Gude
Director

Enclosure

CONTENTS

Page
Foreword, by Edward M. Kennedy, Chairman III
Letter of Submittal V
Introduction 1
I. Illegal Migration: Numbers and Impact 3

A. Numbers:

1. Preliminary Review of Existing Studies of the Number of Illegal Residents in the United States (1980) Jacob S. Siegel, Jeffrey S. Passel, and J. Gregory Robinson, U.S. Bureau of the Census 5
2. The Shadows of Invisible People (1980) Charles B. Keely 11
3. Deportable Aliens Located, Aliens Deported, and Aliens Required to Depart [1892-1978] U.S. Immigration and Naturalization Service 16
4. Fraudulent Entrants Study (1976) U.S. Immigration and Naturalization Service 17

B. Impact:

5. The Labor Market and Illegal Immigration: The Outlook for the 1980's (1980) Michael L. Wachter 21
6. The New Sweatshops: A Penny for Your Collar (1979) Rinker Buck 34
7. The "Illegal Aliens" Debate Misses the Boat (1978) Michael Piore 39
8. Illegal Aliens: Economic Aspects and Public Policy Alternatives (1977) Walter A. Fogel 49
9. Illegal Mexican Migration to the United States: Recent Research Findings and Policy Implications (1977) Wayne A. Cornelius 65
10. The Characteristics and Role of Illegal Aliens in the U.S. Labor Market: An Exploratory Study (1976) David S. North and Marion F. Houstoun 77
II. Illegal Migration: Proposed Solutions 99

A. Past Proposals:

11. Preliminary Report of the Domestic Council Committee on Illegal Aliens (1976) 102
12. Amending the Immigration and Nationality Act, and for Other Purposes, House Rept. No. 94-506 (1975) U.S. House of Representatives, Committee on the Judiciary, 94th Congress, 1st session 113
13. Undocumented Aliens (1977) President Jimmy Carter 121
14. Comparative Analysis of H.R. 1663 and H.R 9531/S. 2252 (1977) Congressional Research Service 128
15. Statement of Position Regarding the Administration's Undocumented Alien Legislative Proposal (1977) Mexican American Legal Defense Educational Fund (MALDEF) 133

B. Enforcement and Amnesty:

16. Department of Justice Authorization Act, Fiscal Year 1981, Senate Rept. No. 96-786 (1980) U.S. Senate, Committee on the Judiciary, 96th Congress, 2d session 135
17. Department of Justice Appropriation Authorization Act, Fiscal Year 1981, House Rept. No. 96-873 Part 1 (1980) U.S. House of Representatives, Committee on the Judiciary, 96th Congress, 2d session 139
18. Executive Order 9397, Numbering Systems for Federal Accounts Relating to Individual Persons (1943) President Franklin D. Roosevelt 144
19. The Criminal Use of False Identification (1976) U.S. Department of Justice, Federal Advisory Committee on False Identification 145
20. The Canadian Experience with Amnesty for Aliens: What the United States Can Learn (1979) David S. North 164
21. Controversy Over Proposed Amnesty for Illegal Aliens (1977) Congressional Digest 177

II. Illegal Migration : Proposed Solutions—Continued

Page

C. Temporary Worker Programs:

22. Proposal for a System of Temporary Worker Migration Visas (1977) Wayne A. Cornelius 188
23. S. 1427, 96th Congress, 1st session (1979) Senator Schmitt (for himself, Senator Hayakawa, and Senator Goldwater) 197
24. H.R. 326, 96th Congress, 1st session (1979) Representative Fish 205
25. Illegal Immigration and U.S.-Mexican Border Control: Analysis and Recommendations; House Judiciary Committee Print No. 20 (1978) 208
26. Letter to Honorable Ray Marshall, Secretary of Labor, May 1, 1979; Summary of a Seminar on Immigration and Employment Policies, March 23, 1979 Eli Ginzberg 212
27. Guestworkers: Lessons from Western Europe (1980) Philip L. Martin and Mark J. Miller 222
28. The United States, Mexico, and the Wetbacks, 1942–1947 (1961) Otey M. Scruggs 238
29. Mexican, Foreign Worker Programs (1965) Congressional Quarterly Service, Congress and the Nation, 1945–1964 254
30. Note from the Mexican Ambassador to the Secretary of State of the United States, June 21, 1963 260
III. Immigration Goals 265

A. Policy Considerations:

31. Illegal Immigration and the New Restrictionism (1979) Otis L. Graham, Jr 268
32. Population and the American Future (1972) Commission on Population Growth and the American Future 279
33. Interagency Task Force on Immigration Policy Staff Report (1979) Departments of Justice, Labor, and State 283
34. Excerpts from Congressional Reports on The Refugee Act of 1980 305
35. U.S. Immigration: A Policy Analysis (1979) Charles B. Keely 347
36. The Migration of Human Populations (1974) Kingsley Davis 359
37. The Need to Modernize Our Immigration Laws (1975) Charles Gordon 372

B. Numbers and Criteria:

38. Immigration to the United States (1820–1978) U.S. Immigration and Naturalization Service 405
39. Immigrants Admitted by Classes Under the Immigration Laws and Country or Region of Birth, Year Ended September 30, 1978 U.S. Immigration and Naturalization Service 406
40. Immigrant Numbers for July 1980, U.S. Bureau of Consular Affairs 407
41. Interagency Task Force on Immigration Policy Staff Report (1979) Departments of Justice, Labor and State 410
42. U.S. Immigration: A Policy Analysis (1979) Charles B. Keely 419

C. Administrative Structure:

43. Immigration Law and Practice (1979) Jack Wasserman 435
44. Immigration Law and Procedure, Revised Edition (1980) Charles Gordon and Harry N. Rosenfield 441
45. Necessary Administrative Reforms in the Immigration and Nationality Act of 1952 (1958) Harry N. Rosenfield 451
46. Whom We Shall Welcome (1953) President's Commission on Immigration and Naturalization 458
47. H.R. 7700, 88th Congress, 1st session (1963) Representative Celler 476
48. Border Management and Interdiction: An Interagency Review (1977) U.S. Office of Drug Abuse Policy 480

INTRODUCTION

This volume of selected readings has been prepared at the request of Senator Edward Kennedy, the Chairman of the Senate Judiciary Committee, for use by the Select Commission on Immigration and Refugee Policy.

Pursuant to consultation with the Executive Director of the Select Commission, Dr. Lawrence Fuchs, the readings are grouped into sections on illegal migration and immigration goals. Within unavoidable space limitations, the sections are organized as closely as possible according to guidelines provided by Dr. Fuchs regarding specific aspects of these subjects identified as being of particular interest to the Commission. Each section is prefaced by a brief summary of the articles and the major issues they address.

The inclusion of the articles in these readings does not represent an endorsement by the Congressional Research Service of the views expressed. An effort has been made in the selection of the articles to reflect various points of view on topics of controversy. The existence of differing views is also noted in the prefaces to the separate sections.

I. ILLEGAL MIGRATION: NUMBERS AND IMPACT

The first section of the readings on illegal migration is concerned with the definition of the issue, including the numbers involved and the impact of undocumented aliens in the United States.

A. NUMBERS

The size of the undocumented alien population is not known, although the most frequently cited estimates currently range between 3 and 6 million. Quoting from the Census Bureau paper which begins this group of readings, "there are currently no reliable estimates of the number of illegal residents in the country or of the net volume of illegal immigration to the United States in any recent past period." The paper was prepared for the Select Commission and consequently is only excerpted here.

The Census Bureau excerpt is followed by a recent article by Charles Keely reviewing attempts at estimating the number of illegal migrants in the context of efforts to formulate policy regarding this migration, and by a table prepared by the U.S. Immigration and Naturalization Service (INS) showing deportable aliens located, 1892–1978. It will be noted that the number of apprehensions exceeded 1 million for the past 2 years, a figure only reached previously in 1954. The Executive Summary of the Fraudulent Entrants Study, published by INS in 1976, is also included.

B. IMPACT

The impact of illegal migration on various aspects of U.S. life, particularly the labor market, has been the subject of major interest during the past decade, as reflected in the fairly lengthy selection of readings on this general subject. They are presented in reverse chronological order, covering the period 1976–1980.

The most recent article, "The Labor Market and Illegal Immigration: the Outlook for the 1980s" by Michael Wachter (1980), considers the probable impact of illegal immigration in the context of a projected shortage of unskilled domestic workers in the late 1980s. Wachter concludes that this change in the labor force will make it increasingly difficult to continue to avoid a conscious policy regarding immigration. He suggests consideration of a European-style guest worker program as an alternative to illegal immigration which, he argues, would afford the native workforce more protection than would increased legal permanent immigration.

The second article, "The New Sweatshops: A Penny for Your Collar" by Rinker Buck (1979), differs from the other selections in being descriptive rather than prescriptive and in focusing primarily on the impact of the aliens' employment in the U.S. on the aliens themselves rather than on domestic workers. The article is an exposé of the employment conditions of illegal migrants working in the garment industry in New York City. Buck reports that the "new sweatshops" have proved to be largely inaccessible to either labor or immigration law enforcement efforts, in effect marking a return to the sweatshops which existed prior to unionization and the enactment of labor protection laws.

In "The 'Illegal Aliens' Debate Misses the Boat," Michael Piore (1978) argues that "industrial societies seem systematically to generate a variety of jobs that full-time, native-born workers either reject out of hand or accept only when times are especially hard." He argues further that, in the absence of sufficient legal migrants to fill them, these jobs act as a powerful pull factor for illegal migrants: "extralegal immigration seems to reflect the fact that legal immigration quotas don't let in as many immigrants as the American economy needs." Based on these and related premises, Piore argues for restricting legal immigration of higher level manpower, reducing the size of the so-called secondary labor market (low-wage, low-status jobs), and for the legitimation of the migrant labor force required to fill the remaining secondary labor market jobs.

In "Illegal Aliens: Economic Aspects and Public Policy Alternatives," Walter Fogel (1977) finds that illegal aliens have had significant negative impacts on the labor market, in the form of both displacement of native workers and a lowering of the relative wages where illegal aliens are employed. Accordingly, he favors a policy which severely restricts illegal immigration, by means of employer sanctions coupled with a work card. He also favors a liberal amnesty policy, and argues for special treatment of Mexico in the form of increased legal immigration.

Wayne Cornelius (1977) reaches a significantly different conclusion about the impact of illegal migrants on the labor market in "Illegal Mexican Migration to the United States: Recent Research Findings." Among other findings, he concludes that there is no direct evidence of displacement of U.S. workers by illegal Mexican migrants, and that they contribute more in taxes than they take from the U.S. in social services. He recommends a moratorium on unilateral U.S. efforts to restrict illegal immigration by such means as employer sanctions and increased INS enforcement efforts. In order to legalize the current flow, he recommends an increase in the quota for legal migration from Mexico, the institution of a new system of temporary worker migration visas, and an amnesty program.

The Executive Summary is included from a 1976 report by David North and Marion Houstoun, entitled *The Characteristics and Role of Illegal Aliens in the U.S. Labor Market: An Exploratory Study*, prepared under contract to the U.S. Department of Labor. Despite the limited size of the North/Houstoun sample of apprehended illegal aliens (793), the study is considered by many the single best source of data on the subject. It is cited by many commentators in the field, including those who differ with North and Houstoun in their interpretation of the significance of the data. The authors concluded that the aliens' impact is primarily on the labor market, and that it tends to be negative.

A. NUMBERS

1.

January 1980 (Rev.)

Preliminary Review of Existing Studies of the Number of Illegal Residents in the United States*

Jacob S. Siegel
Jeffrey S. Passel
J. Gregory Robinson
U.S. Bureau of the Census

Introduction

Despite a paucity of data and the obvious difficulties of the task, several attempts have been made to estimate the number of illegal residents[1] in the United States for various dates in the 1970's (table 1). The methods employed to derive the estimates have varied widely. Some of the estimates are speculative and others are empirically based. Figures offered by former Commissioners Farrell and Chapman, and Associate Commissioner Gus, of the Immigration and Naturalization Service (INS) are essentially speculative. This description may also be applied to the estimates based on the use of the Delphi method offered by Lesko Associates in 1975. However, several studies are now available which employ analytical techniques, either statistical analysis (Lancaster and Scheuren, 1978; Heer, 1979; Robinson, 1979; Mexico, CENIET, 1979a) or survey methods (Mexico, CENIET, 1979b). In the following sections, the various estimates will be reviewed and assessed.[2] A further note is offered on what is known about the geographic distribution of the resident illegal population.

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[1] The term "illegal resident" is used here to denote persons who would be considered usual residents of the United States for purposes of census enumeration but who are deportable because they violated the statutes regarding entry to the United States or because they violated the terms of their admission after being admitted legally. The term encompasses, therefore, those who "entered without inspection," "visa abusers" or "overstayers," and "fraudulent entrants." These groups as a whole have been described variously by the terms "illegal aliens," "illegal migrants," "undocumented workers," "deportable aliens," etc.

[2] For another recent review of the studies on illegal immigration, see Morris and Mayio (1980 forthcoming); earlier reviews include U.S. Department of Justice (1976b) and Keely (1977).

*This paper was prepared as a working document at the request of and for the use of the Research Staff of the Select Commission on Immigration and Refugee Policy.

This review of the existing studies on illegal residents finds that there are currently no reliable estimates of the number of illegal residents in the United States or of the net volume of illegal immigration to the United States in any recent past period. Although even the approximate number of illegal residents remains uncertain, inferences can be drawn with regard to the rough magnitude of the number. At the end of this review, the authors offer their own cautious speculations.

INS Speculative and Conjectural Estimates

Several conjectural estimates of the number of illegal residents living in the United States were made during the 1970's by officials of the Immigration and Naturalization Service. Commissioner Farrell announced an estimate of 1 million illegal residents for 1972 which was the result of a series of "educated guesses." The number of aliens in the categories of overstays, crewmen deserters, and stowaways was guessed to be 175,000 for 1972. In 1971, these categories accounted for 19 percent of the apprehensions and entries without inspection accounted for 81 percent. These percentages were then assumed to apply to the illegal population at large in 1972.

A description of the "methodology" underlying Commissioner Chapman's estimates of 4 to 12 million for 1975 has never been made available by the INS. Since presumably it lacked any form of empirical basis, it must be viewed as arbitrary and conjectural.

In October 1975, Lesko Associates released a report, prepared under contract to the Immigration and Naturalization Service, which contained two separate estimates of the number of illegal residents in the United States in 1975. The Lesko estimate of 8.2 million for the total illegally resident population resulted from an application of the Delphi technique. This technique might be characterized as "iterative informed guesswork." The Lesko estimate has been widely criticized in various public forums as a poorly implemented application of this technique because, among other reasons, important stakeholders were omitted from the panel and the panelists provided no rationale for their initial estimates or changes in these estimates. The second Lesko estimate of 5.2 million for Mexican illegal residents has also been soundly criticized on several counts (Library of Congress Congressional Research Service, 1976; Roberts et al., 1978). In general, the Lesko estimates are based on extremely weak and untenable assumptions.

The INS estimate of 6 million for 1976 (Chapman, 1976a; Guss, 1977) was based on responses to requests to the INS District Directors from INS headquarters for regional estimates of illegal residents. The district offices were asked to provide, in addition to estimates of illegals for their districts, a description of the methodology used to generate the estimates. None gave specific procedures. Rather, all but one referred to the "experience" of officials as the basis for the estimate; the other claimed no "scientific" basis at all for his estimate. Thus, the overall estimate may be characterized as "synthetic speculation."

An estimate of 3 to 6 million illegal residents for 1978 was given by Commissioner Castillo in Congressional testimony. This estimate is simply a distillation of previously available estimates and is not based on any new research or new data. In his own testimony, Castillo characterized his estimate as "soft." . . .

Conclusion

This review of the existing studies on illegal residents in the United States finds that there are currently no reliable estimates of the number of illegal residents in the country or of the net volume of illegal immigration to the United States in any recent past period. Even if we disregard the more conjectural of the estimates of illegal residents (Lesko Associates, 1975; Chapman, INS, 1976a; Guss, INS, 1977; Castillo, INS, 1978), we cannot confidently accept the results of the analytic and empirical studies. They characteristically depend on broad untested assumptions and are subject to other major limitations mentioned in the paper. Often alternative reasonable assumptions could be employed which could substantially modify the estimates and could produce an impracticably wide range. This comment characterizes the Lancaster-Scheuren estimates, the Robinson estimates, the Heer estimates, and the estimates based on the Mexican Border Survey. The estimate of Mexican nationals in the United States based on the Mexican National Survey of Emigration of December 1978-January 1979 (0.4 million) is a "direct" estimate but it too is subject to serious question. The results would tend to be biased downward for several reasons, including particularly the choice of December-January as the survey period and the failure to reflect the large number of legal immigrants from Mexico in the United States who register with INS. Even discounted estimates of illegal residents from Mexico made by local authorities would quickly cumulate to far larger global estimates than the Mexican National Survey shows.

Although the number of illegal residents in the United States remains uncertain, the authors are willing to make some inferences from the available studies with regard to the possible magnitude of the numbers. They offer the following cautious speculations. The total number of illegal residents in the United States for some recent year, such as 1978, is almost certainly below 6.0 million, and may be substantially less, possibly only 3.5 to 5.0 million. The existing estimates of illegal residents based on empirical studies simply do not support the claim that there are very many millions (i.e., over 6 million) of unlawful residents in the United States.

The available evidence indicates that the size of the Mexican population living illegally in the United States is smaller than popular estimates suggest. The Mexican component of the illegally resident population is almost certainly less than 3.0 million, and may be substantially less, possibly only 1.5 to 2.5 million. The gross movement into the United States of Mexican illegals is considerable, as is reflected in the large numbers of apprehensions made by INS, but this "immigration" is largely offset by a considerable movement in the opposite direction. This circular flow of legal and illegal immigrants has historically been a normal part of the labor-intensive segment of the economy in the Southwestern United States. Apparently, most of the Mexican nationals who enter the United States illegally in any year return to Mexico to live for a part of the year and would remain in Mexico if economic conditions deteriorated sufficiently in the United States or if economic conditions in Mexico improved greatly.

The estimates given here suggest that the non-Mexican component of the illegally resident population makes up a much larger share of the total number of illegals than commonly believed. These illegals typically overstay their visa periods or enter with fraudulent documents rather than entering clandestinely. This group of illegals, particularly those living in the East, is likely to differ in several significant aspects from their Mexican counterparts. Non-Mexican illegal residents are less likely to move back and forth across the border in response to their short-term economic goals or fluctuations in the U.S. economy; they are also less likely to be tied to seasonal agricultural employment. Because of the difficulties of reentering the country or the greater costs of returning to their homeland, it is likely that a large proportion of the non-Mexican illegal residents remain here indefinitely. Hence, non-Mexican illegal immigration may add to the permanent resident population to a far greater extent than the Mexican migration flows.

We have unfortunately been unable to arrive at definitive estimates of the number of illegal residents in the United States or of the magnitude of the illegal migration flow. The phenomenon we have sought to measure, by its nature, is not an easy one to deal with. Researchers and policymakers will have to live with the fact that the number of illegal residents in the United States cannot be closely quantified. Therefore, policy options dependent on the size of this group must be evaluated in terms which recognize this uncertainty.

2.

Estimating the Number of Illegal Migrants

The Shadows of Invisible People

by Charles B. Keely

The United States has the largest guestworker program in the world. The workers are here illegally. Segments of the American economy are built on surreptitious entry, fraudulent documents and violations of entry permits. Ironically, it is not against the law to hire illegal migrants.

The federal government relies on accurate population estimates for the administration of such national programs as revenue sharing, but its estimates of the numbers, distribution and characteristics of illegal migrants are fragmented and of uneven quality.

Whether to grant amnesty to illegal migrants already in the country, whether and how to conduct a regulated temporary worker program, and what resources should go to policing the border are all important issues which could benefit from better information on illegal migrants.

Given these needs — plus the scientific challenge involved in developing methods to measure an illegal activity — estimation efforts during the past decade have been disappointing. Part of the reason why we know so little is that illegal migration has long been controversial, and estimation efforts themselves have sometimes been at the heart of the controversy.

In 1964 Congress did not renew the Bracero program, under which temporary laborers from Mexico could legally come to the United States. Opposition to the program's abuses, and its widely acknowledged role in holding back union organization and improvement of working conditions in the Southwest, were the forces that contributed to ending Mexican temporary labor. Immigration law still allows the entry of temporary workers, but today's temporary agricultural labor programs are concentrated by executive branch decisions on the East Coast and involve Caribbean harvesters and Canadian foresters.

The Immigration Act of 1965 mandated a ceiling on immigration to the United States from other countries in the Western Hemisphere, to begin in 1968, and required a labor clearance for all immigrants from this hemisphere, except the immediate family members of a U. S. citizen or legal permanent immigrant. Ending opportunities for temporary labor and making it virtually impossible for a lower skilled person to gain legal entry as a permanent immigrant put formidable legal barriers in front of the would-be Mexican migrant. The immigration law had the same effect for persons from countries other than Mexico in this hemisphere, and other places in the world, such as the Philippines and Hong Kong.

The changes in law, however, did not do away with the demand for the labor, the tradition of migration, or the relationships and social structures which had supported the migration process for generations. It is not surprising that by 1971, when Congress held public hearings on the issue and published five volumes of transcripts, it was clear that migration continued, despite the fact that it was now illegal.

In 1972, after two years of study and hearings, the Commission on Population Growth and the American Future published its final report, but skirted the issue of migration. In fact, its members were unprepared to deal with it, factually or politically. The commission was surprised to discover that legal immigration was a significant proportion of population growth in the United States. The proportion was about 16 percent annually in the late 1960s and, if fertility declines continued, would be 20–25 percent by the end of the 1970s. The 1978 estimate, for example, is 26 percent.

The commission was even more surprised by the emotion and political vigor of a wider range of organizations with strong views on immigration. Indeed, the commissioners themselves were split, almost evenly,

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Charles Keely is a demographer on the staff of the Population Council's Center for Policy Studies.

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over the question of whether to reduce immigration levels. In the end, the commission made two recommendations on immigration policy: not to increase the level of legal immigration and, as a way to cut down on the movement, to impose sanctions against employers who hired illegal migrants.

In 1974, the newly appointed commissioner of the Immigration and Naturalization Service, Leonard J. Chapman, Jr., began a public education campaign on illegal migration. Chapman saw the INS as hopelessly overwhelmed by illegal "aliens," and talked about a "flood" and a "rising tide." During his term of office he gave various estimates of the number of illegal migrants, ranging between about 4 million and 12 million. He told Congress that with a big enough budget and a sanctions law against employers, the INS could open up "one million jobs for Americans."

In his eyes, the influx of illegal migrants was already large and growing out of control. Their presence was lowering wages and working conditions, displacing Americans from jobs, and adding to social costs and the tax burden.

Mexican Oil

Commissioner Chapman's campaign touched nerves. Not only was the United States in the midst of a recession, but also it was clear that no longer could immigration be considered only a domestic policy issue. Illegal immigration was international worker migration, and raised thorny problems about relations between this country and its Southern neighbors. Today, as Asian political refugees attract newspaper headlines and the attention of the government, the foreign relations problems caused by worker migration in Europe, the Middle East, the United States and parts of Latin America and Africa are far from settled.

The Mexican oil and gas discoveries drive home the foreign policy implications of migration. Oil reserves permitted Mexico to resist U. S. efforts to get Mexico to control the flow of illegal migration and also allowed Mexico to emphasize the need to remove restrictive trade barriers if Mexico were to develop. Recently-announced Mexican development plans focus on growth rather than employment generation, a necessary means of reducing illegal flows. Mexico seems to assume that the United States is interested in a politically stable Mexico and that this and other foreign policy objectives, including those concerning oil and gas, will result in an accommodation of domestic United States interests regarding illegal migration policy.

Illegal migration has always touched the nerves of U. S. workers, unionized or not. General Chapman's campaign raised immediate questions of strike breaking, replacing American workers by undercutting on wages or conditions, or depressing working standards by the existence of a cheap labor pool. Questions about the need for additional labor and the creation of an underclass of illegal or temporary laborers hovered in the air.

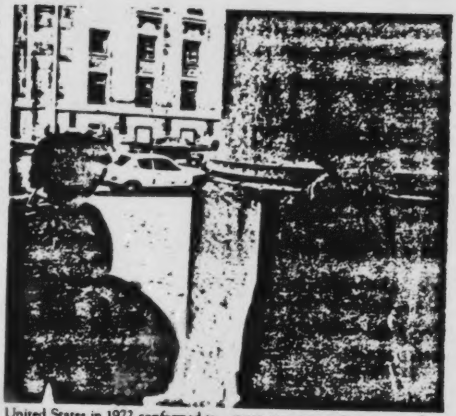
Finally, illegal migration touched the nerves of population and environmental organizations. Unregulated population growth and its pressure on resources flew in the face of all that limits-to-growth advocates had worked for. If illegal migrants settled and duplicated the integration process of past immigrants, their offspring eventually would become inordinate consumers like other Americans. The best solution was strong measures to control and halt illegal migration.

In the past decade illegal migration has become an important national problem in the eyes of Congress, the commissioner of immigration and a national commission on population. The campaign by commissioner Chapman painted a threatening picture. Although the national furor has calmed to some extent, perhaps reflecting a more moderate commissioner, Leonel Castillo, still unresolved are such issues as the need for a temporary labor program, the link between illegal migrants, oil supplies and trade in our relations with Mexico, the impact of immigration on the border counties, the growth of border violence, funding for Immigration and Naturalization Service, and policy toward illegal migrants who have remained in the U. S. for years.

Shadowy Estimates

Given the public attention to illegal migration and its impact on such vital interests as oil supplies, economic conditions, population growth and public services, it is startling that so little is known about the "stock" of illegal migrants — the number and demographic characteristics — of illegal residents of the U. S. and their "flow" — the number that enter and leave each year. Until we have better estimates we will not know how many are temporary workers responding to a demand for labor and how many are permanent additions to our population.

"The absence of direct measures has contributed to the circulation of estimates of illegal migrants which seem to vary according to the interests of the group gathering them."



Because they are here illegally, migrants do not lend themselves to direct counting. The Census Bureau counts people without reference to their legal or illegal status, and so it is difficult to tell how many illegal migrants are included in the 1970 Census — and how many will be counted in the 1980 Census. The absence of direct measures has contributed to circulation of estimates that vary widely. Indeed, these estimates seem to vary according to the interests of the group gathering them. The rest of this article examines the shadowy world of estimating the size of the illegal migrant population.

During hearings in 1972 before the House Subcommittee on Immigration, commissioner Raymond F. Farrell gave the impression that the Immigration and Naturalization Service was not overly concerned about illegal migrants. When pressed, he estimated that slightly over one million illegal migrants were in the country, a figure arrived at on the basis of "educated guesses" (a popular approach) and ratio techniques.

Figures on apprehensions of aliens, divided into various subcategories (e.g., entry without inspection, visa overstay, fraudulent documents), for 1971 provided the foundation of the estimates. Based on trends in apprehensions in the categories of overstay, crewmen deserters, stowaways, and aliens deportable for criminal activity, an "educated guess" led to the estimate that 175,000 in these categories were still at large in 1972. Of all deportable aliens apprehended in 1971, 19 percent were in these categories. The other 81 percent were aliens, mostly Mexican, who entered without inspection — they tried to sneak across the border. If the total illegal migrants at large in the United States in 1972 conformed to this 19–81 percent distribution of those apprehended in 1971, then 746,000 entry-without-inspections were at large.

This number plus the 175,000 totalled 921,000, which was increased by 10 percent ("educated guess") to cover those who violated visa conditions after entry, had fraudulent documents or falsely claimed U.S. citizenship. The resulting total estimate was 1,013,000 illegal migrants in the country in 1972. In its report the subcommittee disagreed with Farrell and estimated the number to be double his figure. But it gave no basis for that particular margin of increase.

Commissioner Chapman's bold claims about the invasion of illegal migrants pointed up the need for more accurate estimates to inform program and budget planning. The range of 4–12 million which Chapman gave before Congress in February, 1975, was not particularly helpful. In the summer of 1975, INS contracted with Lesko Associates, a Washington consulting firm, to perform "a quick-reaction study to reduce the wide variance of the estimates."

The Delphi Panel

Lesko's method was to use a Delphi panel. This method requires panel members to estimate a situation or future development on the basis of their best information and analysis. Several estimation rounds are usually required. In the first round, each panelist makes an independent estimate, giving the basis and an evaluation of the important variables underlying the estimate.

The separate estimates are collated and edited and sent to panelists for comment, and a second round of estimation with the added input of other panelists' reasoning and estimates is undertaken. Rounds continue until a reasoned consensus develops or proves elusive. The value of the exercise lies not only in consensus but the reasoning and arguments in support of the relative importance of factors which results in consensus or dissensus.

Lesko's Delphi panel and the process it used were far from ideal. It consisted of six "experts," unnamed in the final report made public. But none of the panelists was an undocumented immigrant, an employer of illegal migrants or an INS employee, all important stakeholders in the outcome who might be expected to have first-hand experience. The estimates on round one had a range of 2.5 to 25.1 million illegal migrants. By the third and final round, the range was 4.2 to 11 million, with a mean of 8.2 million. The participants in Lesko's Delphi panel were not required to provide the basis or rationale for their estimates or for the changes in estimates from round to round.

Congressman Herman Badillo of New York asked both the Congressional Research Service and the Census Bureau to review Lesko's report. Their conclusion was summarized in the letter to Congressman Badillo by the director of the Census Bureau, Vincent Barabba, which was also quoted in the introduction of the Congressional Research Service Report: "In our opinion the estimates of current illegal alien population shown in the study are based on weak and untenable assumptions, and add very little to our knowledge of the size of the illegal alien population."

INS Estimates

Given this poor reception to the Lesko report, the Immigration and Naturalization Service called upon its four regional offices in 1976 to estimate the number of illegal migrants in order to get a firm number for planning that would be acceptable to Congress and others as reasonably sound. After canvassing the district offices within each region, the four regional estimates, obtained within days, totalled six million.

When the regions were requested to provide the basis for their estimates, all four replies to INS headquarters emphasized that they were based on the experience of persons in the field (educated guesses again). Nevertheless, the head of the service's planning and evaluation unit wrote in an INS publication in the spring of 1977: "We do have strong evidence that there are about six million illegal aliens in the country."

Each of these INS estimates was meant to show that from the service's point of view (a) there was no problem (in 1972), or (b) there was a problem (after 1974). Each estimate resulted from a request that would be hard to refuse (from Congress, as part of a contract, to the head of the unit in charge of research). A reply came, sometimes circumscribed with provisos. But in the last two cases the INS presented the numbers as authoritative. With the INS as the source and presented as based on strong "evidence," these estimates have been picked up by the media and today still define the size, scope and seriousness of the "illegal alien problem."

But these estimates all have been severely criticized. The critique of the Lesko report by the Congressional Research Service and the Census Bureau was amplified in papers at scholarly meetings and other forums where the problem of illegal migration was discussed. The numbers became an issue. Support of big numbers or small numbers and criticism of or support for estimation techniques, became symbolic of an assumed political stance of hard or soft—of being a "realist" or engaged in "scare tactics." The atmosphere was hardly inviting to scientists to work on the problem.

Some Better Estimates

Some estimation work on both the stock and flow of illegal migrants has been done by persons in and out of government, but unconnected with the dispute. This work represents the most reliable information available. Clarise Lancaster and Frederick Scheuren, in a paper given at the 1977 meeting of the American Statistical Association, presented an estimate of the 18–44 year old illegal migrant population as of March 1973.

Lancaster and Scheuren's work developed out of a Social Security Administration matching study. They used a multiple-system technique to estimate persons missing in matched samples of Social Security beneficiaries, persons in Social Security covered employment, and federal tax filers. Using "rough, subjective 68 percent confidence bounds," they estimated about 3.9 million illegal migrants between the ages of 18 and 44, with a range of 2.9 to 5.7 million.

J. Gregory Robinson of the Census

"From demographic analyses, the resident illegal migrant population appears smaller than is usually believed to be the case. But is the political atmosphere such that estimation techniques can be applied and evaluated on their merits?"

Bureau analysed changes in age-specific death rates to develop estimates. In a paper delivered last April at the Population Association of America's 1979 meeting, Robinson reasoned that if a large group of illegal migrants were present but not included in the census or intercensal population estimates, then a spurious rise in death rates should result for young adult males. In fact, such "false trends" did appear in the 10 states in the Southwest and East where illegal migrants are assumed to be concentrated. Moreover, the false trends were accounted for by deaths due to violent causes (i.e., accidents, homicide, suicide, and other external causes) as would be expected in this age group.

Robinson concluded from his analysis that 3–4 million white males, age 20 to 44, were in the U. S. illegally as of 1975.* The size of Robinson's estimates was most sensitive to mortality rates assumed for illegal migrants and less sensitive to assumptions about coverage of mortality records and inclusion in census. He further concluded that his analysis of mortality trends from 1960 to 1975 by states showed two waves of illegal migration: one in the late 1960s to the Eastern states and another in the first half of the 1970s to the Southwest. Robinson went on to suggest use of other demographic methods such as patterns of sex ratios and cohort analyses in the 1970 and 1980 Mexican and U. S. censuses to substantiate his and the Lancaster/Scheuren findings.

What has emerged is a picture of a resident illegal migrant population smaller than usually believed to be the case. The more recent analyses, using demographic methods, conclude the number of illegal migrants around 1973–75 to be in the lower end of the 4 to 12 million range used by former INS commissioner Leonard Chapman.

Compared to inflation and energy, illegal migration has recently subsided somewhat as a concern of government and the media. Although regional interest continues in border areas, it is focused on border violence and organized smuggling.

But immigration is an emotive and symbolic issue. When events make it once again a salient issue, the political risks are so high that politicians would rather avoid it. Even during the mid-1970s when illegal migration received so much media attention, Congress failed to pass bills to punish employers of illegal migrants. Although President Carter announced a package of proposals on undocumented workers in August 1977, the administration did not push them in Congress, and Congress did not act on them.

However, estimates of the size and growth of illegal migration have broad domestic and foreign implications. The question is whether the political atmosphere is such that estimation techniques can be applied and evaluated on their merits, and not on whether they conform to some preconceived high or low estimate.

●

**Although Robinson and Lancaster and Scheuren agree on total estimates, they disagree on composition, since Robinson's trend analysis of age-specific death rates provided no demographic indication of large groups of female or "other races" illegal residents. Lancaster and Scheuren estimated that of the 3.9 million illegal migrants, 1.5 million were white males, 1.1 million were white females, and 900,000 were males of "other races."*

3.

DEPORTABLE ALIENS LOCATED, ALIENS DEPORTED, AND ALIENS REQUIRED TO DEPART YEARS ENDED JUNE 30, 1892-1976, JULY-SEPTEMBER 1976, AND YEARS ENDED SEPTEMBER 30, 1977-1978

Period	Deportable aliens located 1/	Aliens expelled		
		Total	Aliens deported	Aliens required to depart 2/
1892-1978	13,195,175	13,193,623	777,483	12,416,140
1892-1900	-	3,127	3,127	-
1901-1910	-	11,558	11,558	-
1911-1920	-	27,912	27,912	-
1921-1930	128,484	164,390	92,157	72,233
1931-1940	147,457	210,416	117,086	93,330
1931	22,276	29,861	18,142	11,719
1932	22,735	30,201	19,426	10,775
1933	20,949	30,212	19,865	10,347
1934	10,319	16,889	8,879	8,010
1935	11,016	16,297	8,319	7,978
1936	11,728	17,446	9,195	8,251
1937	13,054	17,617	8,829	8,788
1938	12,851	18,553	9,275	9,278
1939	12,037	17,792	8,202	9,590
1940	10,492	15,548	6,954	8,594
1941-1950	1,377,210	1,581,774	110,849	1,470,925
1941	11,294	10,938	4,407	6,531
1942	11,784	10,613	3,709	6,904
1943	11,175	16,154	4,207	11,947
1944	31,174	39,449	7,179	32,270
1945	69,164	80,760	11,270	69,490
1946	99,591	116,320	14,375	101,945
1947	193,657	214,543	18,663	195,880
1948	192,779	217,555	20,371	197,184
1949	288,253	296,337	20,040	276,297
1950	468,339	579,105	6,628	572,477
1951-1960	3,598,949	4,013,547	129,887	3,883,660
1951	509,040	686,713	13,544	673,169
1952	543,535 3/	723,959	20,181	703,778
1953	885,587	905,236	19,845	885,391
1954	1,089,583	1,101,228	26,951	1,074,277
1955	254,096	247,797	15,028	232,769
1956	87,696	88,188	7,297	80,891
1957	59,918	68,461	5,082	63,379
1958	53,474	67,742	7,142	60,600
1959	45,336	64,598	7,988	56,610
1960	70,684	59,625	6,829	52,796
1961-1970	1,608,356	1,430,902	96,374	1,334,528
1961	88,823	59,821	7,438	52,383
1962	92,758	61,801	7,637	54,164
1963	88,712	76,846	7,454	69,392
1964	86,597	81,788	8,746	73,042
1965	110,371	105,406	10,143	95,263
1966	138,520	132,851	9,168	123,683
1967	161,608	151,603	9,260	142,343
1968	212,057	189,082	9,130	179,952
1969	283,557	251,463	10,505	240,958
1970	345,353	320,241	16,893	303,348
1971	420,126	387,713	17,639	370,074
1972	505,949	467,193	16,266	450,927
1973	655,968	584,847	16,842	568,005
1974	788,145	737,564	18,824	718,740
1975	766,600	679,252	23,438	655,814
1976	875,915	793,092	27,998	765,094
1976 TQ	221,824	199,207	4,927	190,280
1977	1,042,215	897,243	30,228	867,015
1978	1,057,977	1,003,886	28,371	975,515

1/ Aliens apprehended first recorded in 1925. Prior to 1960, represents total aliens actually apprehended. Since 1960, figures are for total deportable aliens located, including nonwillful crewmen violators.

2/ Aliens required to depart first recorded in 1927.

3/ Adjustment made for 1952.

United States Department of Justice
Immigration and Naturalization Service

4.

ILLEGAL ALIEN STUDY

PART I

FRAUDULENT ENTRANTS STUDY

A Study of Malafide Applicants for Admission at selected Airports and Southwest Land Border Ports

Office of Planning and Evaluation
Immigration and Naturalization Service
U.S. Department of Justice

September 1976

EXECUTIVE SUMMARY

Objectives of the Study

The Fraudulent Entrants Study is one part of the major Illegal Alien Study designed to provide a statistically valid estimate of the *flow* of illegal aliens through the international airports and Southern land border ports of entry. This studied group of illegal aliens includes those attempting entry with counterfeit or altered documents, as impostors, by false verbal or documented claims to U.S. citizenship, or with valid documents, the terms of which the bearer had in the past or clearly intends to violate after entry, usually to work.

Additionally, the Fraudulent Entrants Study was designed to obtain information on the characteristics of fraudulent entrants and on the incidence of these fraudulent entries by time, place, and techniques used.

Methodology

The study was conducted from September 1975 to February 1976 by two teams, each comprised of four Immigration Inspectors who volunteered for the study. One team inspected a random sample of applicants for admission at the ten major international airports, while the second inspected a random sample of applicants at the twelve largest ports of entry along the Southern land border. Both teams were placed in the primary inspection process and used routine inspectional techniques and questions. The teams were relieved from the usual time pressures, however, and were therefore able to make more thorough inspections.

Results of the Study

During the course of the study, the land border and airport teams denied entry to twelve to fourteen times the routine number of aliens denied entry to the United States at these ports. There were 709 malafide applicants identified by the land team compared to 203,658 admissions, a ratio of one to 287, and 185 malafide applicants denied admission at airports compared to 38,808 admissions, or a ratio of one to 210.

Based on the results of the two teams, in excess of 500,000 malafide entries were projected to have successfully entered through the studied ports during FY 1975, roughly 450,000 at the land ports and 50,000 at the international airports. This projection reflects *entries* rather than necessarily individual *entrants*, and is therefore not an estimate of a population.

Characteristics and Techniques of Fraudulent Entrants

Of the malafide applicants denied entry to the United States by the land team, the majority, 55 percent, were women. The average age of all malafide applicants detected at the Southern land ports was 27 to 28 years. Of these denials along the land border, almost one-quarter were on Saturdays. The most prevalent hours of interception were between 9 a.m. and 6 p.m.

At the airports studied, the majority of the malafide applicants intercepted, 55 percent, were men. The overall average age of malafide applicants denied entry at the airports was about 30 years. Some 71 percent of this group were from countries bordering on the Caribbean Sea. Another 17 percent were from Europe. The majority carried *valid* nonimmigrant visas but intended to violate the terms of these admissions. A common violation of this kind involved unauthorized employment.

5.

B. IMPACT

1.

THE LABOR MARKET AND ILLEGAL IMMIGRATION: THE OUTLOOK FOR THE 1980s

MICHAEL L. WACHTER*

This paper first develops a labor supply forecast for the U.S. labor market in the 1980s, focusing on the effects of the low fertility rates of recent years, and then compares that forecast with the BLS projection of employment demand in the next decade. The author attempts to isolate those occupations and age-sex groups that are likely to have a shortfall of workers and to match the characteristics of those shortage categories with the demographic characteristics of the illegal alien work force. He predicts a relative shortage of unskilled workers in the 1980s, a major departure from past trends, and suggests that an increased flow of immigrants to meet that shortage would benefit skilled older workers and, to a lesser extent, the owners of capital. He also argues, however, that increased immigration would harm domestic unskilled workers—who are increasingly minority group members—by lowering their relative income and raising their equilibrium unemployment rates.

THE purpose of this paper is to investigate the outlook for the United States labor market in the 1980s in terms of its implications for immigration policy. The basic technical element in the study is a labor supply forecast that focuses on the likely impact of the forthcoming demographic twist—the changeover in the younger age groups from the oversized baby boom cohort to the undersized baby bust cohort (that is, the cohort born during the late 1960s and 1970s when fertility rates were very low). This important development on the supply side of the labor market is compared with the Bureau of Labor Statistics projections for occupational employment to 1985.

This study attempts to isolate those occupations and age-sex groups that are likely to have a shortfall of workers and to match the characteristics of the shortage categories with the demographic characteristics of the illegal alien work force. The results indicate an important reversal from usual patterns. If performed for past decades, this analysis would have yielded projections indicating a surplus of unskilled workers; the calculations now indicate a relative shortage of unskilled workers over the next decade.

There are several ways this projected gap might be filled. The market mechanism, if left alone, would be expected to alter the relative prices and wages of different skill groups and capital so as to reduce the supply and demand gap. Relatively large discrepancies, however, would make necessary large changes in relative wages and prices. To the extent that the market adjustments are politically painful, society may seek

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other models of adjustment. Legalizing and attempting to control the level of immigration is one such method.

This study suggests that in the 1980s, as the rate of increase in the native labor force declines, an increased flow of immigrants would benefit skilled older workers and, to a lesser extent, the owners of capital. More specifically, it would benefit the baby boom cohort, as that group enters the thirty-and-over age categories in the 1980s, by allowing an increase in relative income levels and occupational attainment of that cohort. If immigration flows were reduced in the 1980s, however, their position would decline further.

Whereas skilled workers would benefit from increased immigration, unskilled workers would be likely to find their relative income lowered and their equilibrium unemployment rates raised. This economic trade-off between illegal immigrants and the unskilled—especially the disadvantaged work force—seems unavoidable. The domestic unskilled labor supply in the 1980s will be increasingly dominated, moreover, by minority workers. As a result, the trade-off between accepting more immigrant workers and improving the economic position of the domestic disadvantaged population is likely to become a critical public policy issue.

Labor Supply

The forecast of the potential role of illegal aliens in the United States labor market of the 1980s is based on comparing labor supply and demand projections for that period. The labor supply can be broken down into four components: population, labor-force participation rates, hours of work, and immigration. Of the three domestic basic components, future changes in participation rates is the key variable in determining the labor supply in the 1980s.

The size of the working-age population over the next decade is known with some reliability, with future changes in birth rates not affecting the working-age population until at least the year 1995. The hours-of-work component presents somewhat greater problems and, unfortunately, only limited work has been done on its projection.[1] Since hours have been relatively constant over the postwar period, I shall assume for simplicity that they will remain constant over the next decade. The primary concern with this assumption is the potential for shifts between full- and part-time work among the young people who are disproportionately represented in the lower skilled labor markets. In addition, I shall assume that legal and illegal immigration flows remain constant at existing levels in constructing the basic labor-supply projections. This assumption is useful because my analysis is focused on the effects of immigration. Immigration flows can then be viewed as a policy variable dealing with imbalances that may develop in the labor market.

The labor-force participation equations utilized in this paper are updated versions of those published in one of my earlier studies.[2] Calculations are made for the fourteen standard BLS age-sex groups using annual data.[3] Due to a lack of space, those equations will not be summarized here (but they are available on request). They differ from the standard participation equations by the inclusion of cohort-related variables. Traditional equations only capture age-specific effects (e.g., youths always have higher unemployment rates than older workers) and ignore cohort effects (e.g., youths in the baby boom cohort will do worse than youths in the baby bust cohort).

The major cohort variable is the percentage of persons age 16 to 34 relative to the total population age 16 and over. This variable measures the effects of the relative size of the younger cohort on labor-force behavior. The economic assumption underlying this variable, of course, is that the various age-sex groups are imperfect substitutes for one another. Young workers and new entrants into the labor market lack specific training and, therefore, cannot compete effectively with prime-age males who have acquired training due to their ongoing labor market attachment. An imbalance of inexperienced workers, caused by the entry of the baby boom cohort into the labor force, results in an increase in the relative unemployment rate and a decrease in the relative income of the younger workers.[4] Therefore, a surfeit of young workers (as is the case today) results in adverse labor market conditions for these groups. The result is an increase in the participation rate, especially of females, to compensate for the reduction in the income of the younger prime-age male workers.

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[1] For a discussion of the hours-of-work problem, see National Commission for Manpower Policy, *Work Time and Employment*, Special Report No. 28 (Washington: NCMP, October 1978).

[2] Michael L. Wachter, "Intermediate Swings in Labor-Force Participation Rates," *Brookings Papers on Economic Activity*, No. 2 (Washington, D.C.: The Brookings Institution, 1977), pp. 545 – 74.

[3] It is not possible to obtain reliable regional breakdowns for the various age-sex groups. Since illegal immigrants are concentrated geographically, disaggregation by region would be valuable to test for regional effects. The limited empirical evidence that exists to date, however, does not isolate a large regional effect. This suggests that geographic mobility is sufficiently great for both the native and illegal immigrant populations for the assumption of a national labor market to be reasonable. See, for example, Walter Fogel, *Mexican Illegal Workers in the United States* (Los Angeles: Institute of Industrial Relations, University of California, 1977).

The data support the relative cohort size variable as a determinant of behavior. For example, since 1960 the sharp increase in female participation rates is heavily concentrated in the younger age group. These are the groups that have experienced a decline in their relative income position. Older females, with rising relative family income since 1960, have only slightly increased their participation rates over the past two decades.

The labor supply forecast is dependent, of course, upon the assumed values for the explanatory variables. The future movements of two key variables are known. The trend variable increases along its predetermined rate of growth and the level of the cohort variable is given by the official U.S. population projections. For the remaining variables, I have assumed the following: (1) unemployment remains at its equilibrium level over the entire period; (2) school enrollment rates recover from their current low levels and return close to their previous peak rates; (3) the armed forces remain a constant percentage of the population; and (4) the current birth rate increases to the zero population growth level in 1981 and remains constant thereafter.

The number of workers projected to be in the labor force in 1985 and 1990 is shown in Table 1. These figures are obtained by multiplying the predicted labor-force participa-

Table 1. Actual and Project Levels for Civilian Labor Force, 1970 to 1990. (in thousands)

Sex and Age	*Actual Levels* 1970	1977	*Projected Levels* 1985	1990
Male				
16–19	4005	4987	4751	4665
20–24	5709	7872	7952	6883
25–34	11311	14886	18130	18834
35–44	10464	10618	14281	16753
45–54	10418	10187	9714	10983
55–64	7124	7042	7345	7172
65+	2164	1826	1720	1584
Total	51195	57418	63893	66874
Female				
16–19	3241	4268	4302	4402
20–24	4874	6555	7037	6255
25–34	5968	9850	13018	14136
35–44	5967	7153	10868	13022
45–54	6531	6697	7118	8899
55–64	4153	4367	5124	5548
65+	1056	1065	1258	1466
Total	31520	39955	48725	53728
Total	82715	97373	112618	120602

Source: The actual data for 1970 and 1977 are from Bureau of Labor Statistics, *Employment and Earnings*. The projected levels are derived by the author. The methodology is discussed in the text and in Michael L. Wachter, "Intermediate Swings in Labor-Force Participation Rates," *Brookings Papers on Economic Activity*, No. 2 (Washington, D.C.: The Brookings Institution, 1977), pp. 545–74.

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[4] For a detailed discussion of this argument, see Michael L. Wachter, "The Demographic Impact on Unemployment: Past Experience and the Outlook for the Future," *Demographic Trends and Full Employment*, National Commission for Manpower Policy, Special Report No. 12 (Washington: NCMP, December 1976), pp. 27–99. For empirical estimates of elasticities of substitution, see Daniel S. Hamermesh and James Grant, "Econometric Studies of Labor—Labor Substitution and Their Implications for Policy," mimeo, Michigan State University, 1978.

Table 2. Compounded Annual Rates of Change for the Civilian Labor Force.

Sex and Age	1970 – 1977	1977 – 1985	1985 – 1990
Male			
16 – 19	3.18	– 0.60	– 0.36
20 – 24	4.70	0.13	– 2.85
25 – 34	4.00	2.49	0.76
35 – 44	0.21	3.77	3.24
45 – 54	– 0.32	– 0.59	2.49
55 – 64	– 0.17	0.53	– 0.48
65+	– 2.40	– 0.74	– 1.63
Total	1.65	1.34	0.92
Female			
16 – 19	4.01	0.10	0.46
20 – 24	4.32	0.89	– 2.33
25 – 34	7.42	3.55	1.66
35 – 44	2.62	5.37	3.68
45 – 54	0.36	0.77	4.57
55 – 64	0.72	2.02	1.60
65+	0.12	2.10	3.11
Total	3.44	2.51	1.97
Total	2.36	1.83	1.38

Source: Derived from the data in Table 1.

tion rates by the population figures for each of the age-sex groups. The annualized rates of labor-force growth between 1970 and 1977, 1977 and 1985, and 1985 and 1990 are presented in Table 2.

The central development projected for the labor markets of the 1980 – 90 period is depicted clearly in Table 2. In the 1970 – 77 period, the labor force grows rapidly for males age 16 to 24 and for females age 16 to 34. This is the result of the passage of the baby boom cohort through that age group and the associated increase in female participation rates. For the 1977 to 1985 period, the baby boom group begins to enter the age 25 to 44 categories with the result that these categories have the largest growth rates. By the 1985 – 90 period, the absolute number of young workers is actually declining for male workers age 16 to 24 and for females age 20 to 24. The major growth occurs for males age 35 to 54 and almost all older female groups.

During the decade of the 1980s the number of young workers in the labor force should be declining. The population in the younger age groups will be falling, and their participation rates—as opposed to the unprecedented increases during the 1970s—will be largely flat. Comparing the period 1970 – 77 with the period 1985 – 90 indicates a demographic transition of immense proportions. The changing outlook for immigration policy is largely a function of this twist in the demographic age structure of the labor force.

Labor Demand Projections

The 1985 demand projections used in this paper are the official Bureau of Labor Statistics calculations.[5] They are shown in Table 3. The BLS foresees a continuation of the shift toward white-collar (except sales) and service (except private household) workers and away from blue-collar workers. The largest negative shifts are away from private household workers and farm workers. Since these are two occupations that tend to attract relatively large numbers of illegal aliens, this could signal a slowdown in the demand-pull forces for illegal aliens in the 1980s. I will argue below, however, that these projections may be in error precisely because illegal aliens have already become an important component in these two occupations.

The approach of this paper is to compare the 1985 BLS occupational projections with my labor supply projections for the same year. In adopting this strategy, I label the BLS occupational projections as determined by demand factors and my participation or labor-force projections as determined by supply factors.[6]

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[5] See Max Carey, "Revised Occupational Projections to 1985," *Monthly Labor Review*, Vol. 99, No. 11 (November 1976), pp. 10 – 22 for a detailed summary of the methodology. The approach adopted in this section for projecting age-sex requirements is similar to that used by Arvil V. Adams and Garth Mangum, *The Lingering Crisis of Youth Unemployment* (Kalamazoo, Mich.: The Upjohn Institute, 1978).

[6] The fact that the BLS constrains total employment in its occupational projections to conform to its own labor supply estimates does not compromise the notion that the model is demand driven. The BLS occupational projections may be viewed as demand oriented because the relative employment by occupation is determined by demand factors with little re-

Table 3. Projected Requirements and Job Openings for Major Occupational Groups, 1974 to 1985.

Occupational Group	*1974 Employment*	*Projected 1985 Requirements*	*Percent Change (Average)*
White-collar workers			
Professional and technical workers	12,338	16,000	29.4
Managers and administrators	8,941	10,900	21.6
Sales workers	5,417	6,300	15.7
Clerical workers	15,043	20,100	33.8
Subtotal[*]	41,739	53,200	(27.5)
Blue-collar workers			
Craft and kindred workers	11,477	18,800	19.9
Operatives	13,919	15,200	9.0
Nonfarm laborers	4,380	4,800	8.8
Subtotal	29,776	33,700	(13.2)
Service workers			
Private household workers	1,228	900	– 26.7
Other service workers	10,145	13,700	34.7
Subtotal	11,373	14,600	(28.0)
Farm workers	3,048	1,900	– 39.0
Total	85,936	103,400	20.3

[*] Details may not add to totals because of rounding. Percentages were calculated using unrounded numbers.
Source: Max L. Carey, "Revised Occupational Projections to 1985," *Monthly Labor Review*, Vol. 99, No. 11 (November 1976), pp. 10–22.

In order to compare the demand and supply oriented models it is assumed, for demand, that the 1970 age-sex requirements of a job are rigid and, for supply, that the 1970 occupational percentage distribution for each age-sex group does not change.[7] These assumptions are adopted as expositional, rather than forecasting, devices because they yield the maximum potential differences between the two models. The purpose

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gard to the likely age-sex composition of the labor force in 1985. On the other hand, my labor supply projections may be viewed as supply oriented because the age-sex composition of the labor force is determined without regard to the demand factors related to the occupational structure.

[7] If the age-sex requirements of an occupation are perfectly flexible, there should not be any discrepancy between the demand and supply projections. Most researchers, however, believe that age-sex barriers are not perfectly flexible because of such factors as the degree of specific training, job attachment, social attitudes, and discrimination. Again, the assumption of zero flexibility is adopted for expositional purposes and to highlight those areas where supply and demand projections may differ.

It is not correct to assume that total age-sex ratios in the demand projections should remain equivalent to the 1970 ratios. Although the 1970 occupational mix is the only input of age-sex groups into the projections, changes in the relative occupation mix will have an effect on total age-sex ratios. If employment in an industry with a high female concentration increases relative to other industries, then the total male-female ratio will shift in favor of females. What remains constant are the 1970 age-sex ratios for each occupation.

Table 4. Projections of 1985 Relative Employment by Occupation and Sex. (Percentages)[a]

Occupation Group	BLS Occupational Demand Model		Labor Supply Model	
	Male	*Female*	*Male*	*Female*
Professional and technical workers	9.0	6.1	8.5	7.0
Managers and administrators except farm	9.0	1.8	6.1	1.5
Sales workers	3.8	2.4	3.9	3.0
Clerical workers	5.1	14.1	4.4	15.2
Craft and kindred workers	12.5	0.6	12.0	0.8
Operatives	10.3	4.6	11.3	6.1
Nonfarm laborers	4.2	0.3	3.8	0.4
Service workers	5.6	8.6	4.5	8.5
Farmers and farm laborers	1.6	0.2	2.4	0.3
Total	61.2	38.8	57.1	42.9

[a] These figures represent percentages of total employment and labor supply.
Source: See footnotes 8 and 9.

is to isolate the areas in which discrepancies are likely to arise and analyze the potential "fit" of illegal aliens before market and other forces adjust to equilibrate supply and demand.

Table 4 presents the 1985 projections, including a sex breakdown by occupation. Columns 1 and 2 indicate the male and female occupational or demand projections as calculated by the Bureau of Labor Statistics.[8] Columns 3 and 4 indicate the labor-force or supply projections of Table 1 allocated across occupations.[9]

The largest single imbalance is not for unskilled workers, but for managers and administrators. This is due to the large projected growth of this occupation and an existing age-sex pattern of employment in it that utilizes few women and younger workers.[10] It is likely, however, that females will experience occupational upgrading and be integrated into managerial positions without much dislocation. In any case, this area is not likely to provide an incentive for significant immigration from abroad. The skilled workers who do migrate are a small percentage of the total and tend to be professionals rather than managers.

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[8] The sex breakdown for each occupation is obtained by multiplying the BLS demand projection for it by the 1970 proportion of total employment in the occupation that was accounted for by each of the 14 age-sex groups. Total labor demand by sex for each occupation is obtained by summing across the age-sex groups.

[9] Column 3 indicates the occupational distribution based on the Table 1 age-sex labor-force supply projections for 1985. Each of the figures is determined by multiplying the supply projections for each of the 14 age-sex demographic groups by the 1970 ratios of occupation to total employment for each demographic group. This yields the projected occupational breakdown for each age-sex group. Total labor supply for each occupation is then obtained by summing over the demographic groups.

[10] As would be expected, the demand driven model, using 1978 age-sex occupational requirements, indicates a larger need for male workers than is available from the labor supply projections. Specifically, the BLS occupational mix, projected to 1985, needs a labor force that is 61.2 percent male. My labor projections suggest a labor force that is only 57.1 percent male. I do not draw any conclusions from these sex differences, however, because of the ease of substituting male for female workers within an occupation. The major difficulties in substituting workers exist across occupations and age groups.

Comparing the supply estimates with the demand projections of Table 4 for blue-collar trades illustrates the potential shortage of male craft, nonfarm laborers, and service workers. For example, whereas in the demand model, 5.6 percent of the work force should be male service workers, the supply model only provides 4.5 percent. Adding together the nonfarm laborers and service workers—on average the two least-skilled occupations—yields a demand for 9.8 percent male workers and a supply of 8.4 percent; hence a shortfall of 1.4 percent. With projected total employment of 107.5 million in 1985, the size of the discrepancy for unskilled males is 1.5 million workers. Since the female supply and demand figures are approximately equal for those two occupations, potential substitution of female for male workers is not large. Presumably, females could be drawn from higher skilled occupations to fill the shortage; however, this will be limited by the favorable labor market for females in the more skilled jobs.

Although the numbers from the demand and supply models do not diverge sharply for most occupational groups, significant problems may still emerge. First, if the number of illegal aliens in an occupation has been increasing, causing an undermeasurement of employment in it, the BLS may be currently understating the growth rate for that occupation and understating projected demand for it, as well, since its demand projections largely assume a continuation of recent rates of growth.

A potential example of this understatement phenomenon appears in the BLS projections for farm workers and domestic workers. Table 4 shows a significant decline in the relative labor demand for farm labor in 1985. But this is exactly what would be expected if illegal aliens have been taking an increasing percentage of the jobs in an occupation, because the occupational projections of the BLS are based largely on native employment. In occupations in which illegal aliens have already made quantitatively important gains (relative to the size of the overall occupation), the projection methodology may seriously understate the gap between the number of jobs and the number of native workers. Furthermore, since the demand projections also understate the future growth of employment in these occupations, this gap can be expected to grow.

Second, the transition from a baby boom to a baby bust cohort in the younger age groups is only beginning in the early 1980s. Since the birth rate peaked in 1957 and then remained at a high plateau through 1961, the peak of the baby boom cohort is still between 24 and 28 years of age in 1985. The gap between the demand and supply projections shown in Table 4 should continue to widen between 1985 and 1995. Indeed, even the rate at which the gap widens grows until after 1985.

Third, the 16 – 19 and 20 – 24 age groups are difficult to evaluate because their labor-force participation rates are particularly sensitive to exogenous changes in school enrollment rates and to the level of the armed forces. My underlying assumptions on these latter two variables are somewhat optimistic in terms of their implications for the likely size of the youth labor force in 1985. This is particularly true given the increasing percentage of youths who are part-time workers. In this sense, the growth in their labor force overstates the growth in their available manhours.

Closing the Shortfall

As shown above, employment projections based on supply (labor force) and demand (occupation) models indicate a gap or shortfall of the male labor force in the lowest skilled occupations. The size of this gap varies over a large range depending upon the particular assumptions used in generating the projections. These projections are developed on the assumption of occupational rigidity between male and female workers of different ages.

This occupational rigidity is not an accurate description of the labor market. Rather, the extreme assumption of no occupational adjustment among age-sex groups is designed to foresee where the ex-ante shortfalls in the labor market are likely to develop. It is not designed to forecast the actual or ex-post age-sex levels of employment by occupation in the future. This is an important distinction. Since the economy adjusts to shortfalls between supply and demand, projected discrepancies are unlikely to persist. The question is: What mechanism will be adopted to adjust the supply and demand pressures?

In response to relative wage and price changes, there are numerous market adjustments that can yield a balance between supply and demand in the labor market of the 1980s without altering the immigration flow. These include: a slower growth rate of lower skilled jobs due to changes in the demand for labor; a slower upgrading of the baby boom generation so that more of them are available to fill the lower skilled jobs; and changes in the supply of manhours among those willing to work in lower skilled markets.[11]

Clearly, occupational employment need not grow along the exponential path predicted by the BLS. Although exogenous shocks could cause departures from the predicted path in either direction, the endogenous labor market mechanism should systematically push labor supply and demand factors into equilibrium. A favorable endogenous response would likely occur because any shortage of workers in a particular job would cause firms to substitute against the scarce input by shifting toward more abundant inputs. A similar adjustment would be made by consumers, who would shift away from relatively expensive goods, that is, those that used relatively greater supplies of the scarce input.[12]

In terms of economic costs, it is always easier to bump workers downward or reduce their promotion than it is to upgrade them quickly. As a result, the hypothesized shortage of entry level workers may be reduced because enough members of the baby boom cohort will be held back (in terms of promotions) to fill the lower skilled jobs typically filled by younger workers. The utilization of older and more experienced workers to perform unskilled tasks traditionally held by younger and less experienced workers, however, can have large social costs for this group and, perhaps, for society as a whole.

An important issue in evaluating the response of the labor market to an influx of illegal aliens relates to the ability of the monetary and fiscal authorities to use stimulative policies to create new jobs for the new entrants. It is obvious that when the economy is in a recession an increase in the labor supply due to additional illegal aliens or domestic workers will, *ceteris paribus*, lead to an increase in the unemployment rate. The cyclical unemployment that exists during a recession can be erased by appropriate monetary and fiscal policies. The more difficult but interesting question is whether the presence of illegal aliens alters the full-employment or equilibrium unemployment rate.[13]

The type of labor market model I have adopted suggests that an increase in illegal aliens would not increase the cyclical component of unemployment but would cause the equilibrium unemployment rate to rise. The mechanism, which is explored in greater detail below, is due to the adverse effect of illegal aliens on the market wage of lower skilled workers. To the extent that market wages decline relative to the level of welfare benefits and similar alternatives, the "cost of being unemployed" would therefore be reduced. To the extent that market wages decline relative to minimum wages, or to unionized wages in the high-wage sectors, workers would either be displaced or unemployed longer, awaiting a job opening in the high-wage sector. The result of these adjustments would be an increase in the equilibrium level of unemployment.

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[11] That demographic shifts in supply can cause large changes in relative wages has been documented for the experience of the baby boom cohort over the past two decades. See Michael L. Wachter, "Intermediate Swings in Labor-Force Participation Rates," and Finis Welch, "Effects of Cohort Size on Earnings: The Baby Boom Babies' Financial Bust," mimeo, University of California at Los Angeles, January 1979.

[12] The adjustments of firms and consumers to changing relative prices and wages would not only cause the BLS occupational assessment to overstate differences with the actual labor force but would also result in changes in the occupational input matrix. Firms would use relatively increasing numbers of females and older males by molding the available workers to fit the demand or by molding the jobs to fit the skills of the workers. Both adjustments are likely to take place with the more malleable factors absorbing the largest change.

[13] The equilibrium level of unemployment is the level of unemployment that cannot be reduced through general, stimulative monetary and fiscal policies without accelerating inflation. My estimates of the equilibrium rate are derived in "The Changing Cyclical Responsiveness of Wage Inflation Over the Postwar Period," *Brookings Papers on Economic Activity*, No. 1 (Washington, D.C.: The Brookings Institution, 1976), pp. 115 – 19. Also see Franco Modigliano and Lucas Papademas, "Target for Monetary Policy in the Coming Year," *Brookings Papers on Economic Activity*, No. 1 (Washington, D.C.: The Brookings Institution, 1975), pp. 141 – 63.

The Distribution of Benefits and Costs

The distribution of benefits and costs of illegal aliens, for the native population, depends not upon whether the immigration is legal or illegal but rather upon the demographic characteristics of the immigrants. In this analysis, I assume that the great bulk of immigrants are unskilled and are likely to be employed rather than unemployed or out of the labor force.[14] My approach is to treat the flow of illegal aliens as equivalent to an increase in the supply of unskilled workers. This view omits important topics including the economic vulnerability of illegal aliens due to their ineligibility for most social welfare programs and a lack of protection under FLSA and collective bargaining statutes.[15]

In theory, the distributional impact of illegal aliens depends largely on the various elasticities of substitution and scale effects in the production process. It can be argued that, as a rule of thumb, complementary inputs benefit and substitute inputs suffer from immigration. Unfortunately, however, the empirical evidence on which factors of production are complements and which are substitutes is far from definitive. The results depend heavily on the manner in which the inputs are defined and the number included in the particular production function analysis. Including materials or energy (or both) as inputs, as well as capital and labor, for example, changes the results as to which factors are complements and which are substitutes. It is possible, however, to reach certain tentative conclusions as to the relative magnitudes among inputs.[16]

Given the above qualifications it can be assumed that capital and labor are complements. The strongest complementarity is between capital and skilled workers. The relationship between capital and unskilled labor is closer to the borderline so that any effects are likely to be small. Among different labor groups, workers become increasingly complementary the greater the divergence in skill levels. For example, whereas all unskilled production workers can be classified as substitutes for each other, production and managerial workers are assumed to be complements.

Given this framework, the impact of illegal aliens, at least in today's labor market, seems indisputable. Although the magnitude of the effect would vary depending upon the actual number of illegal aliens in this country who are working, the direction of the impact is known. First, illegal aliens depress the wages of the lower skilled native American work force. Second, given existing levels of minimum wages and welfare, for which the Americans but not the aliens are eligible, the wage reduction resulting from illegal immigration may also cause higher unemployment rates for lower skilled native workers. This increase in the unemployment rate would be an increase in the equilibrium rate and, therefore, could not be offset by expansionary monetary and fiscal policies without causing accelerating inflation.

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[14] See, for example, David North and Marion F. Houston, *The Characteristics and Role of Illegal Aliens in the U.S. Labor Market: An Explanatory Study*, prepared for the Employment and Training Administration (Washington, D.C.: U.S. Department of Labor, 1976).

[15] For more general treatment of the economic issues, see Wayne A. Cornelius, "Illegal Mexican Migration to the United States: A Summary of Recent Research Findings and Policy Implications," mimeo, MIT, 1977; Walter Fogel, "Illegal Alien Workers in the United States," *Industrial Relations*, Vol. 16, No. 2 (October 1977), pp. 243–63; Michael J. Piore, "The New Immigration and the Presumptions of Social Policy," in Industrial Relations Research Association, *Proceedings of the Twenty-Seventh Annual Winter Meeting, San Francisco, December 28–29, 1974* (James L. Stern and Barbara D. Dennis, eds.), pp. 350–58; Edwin P. Reubens, "Policy Dimensions of the H-2 Program," prepared for the National Commission for Manpower Policy (December 1978); and North and Houston, *The Characteristics and Role of Illegal Aliens in the U.S. Labor Market*.

[16] See, for example, E. R. Berndt and D. V. Wood, "Technology, Prices and the Derived Demand for Energy," *Review of Economics and Statistics*, Vol. 57, No. 3 (August 1975), pp. 259–68 and Ernst Berndt, "Reconciling Alternative Estimates of the Elasticity of Substitution," *Review of Economics and Statistics*, Vol. 58, No. 1 (February 1976), pp. 59–68.

It is sometimes argued in rebuttal that illegal aliens take jobs that native Americans would not be willing to accept and, hence, that there is little or no employment displacement or wage effect. This argument, however, is more complicated than it appears, as can be seen by differentiating between direct and indirect displacement effects.[17]

In its simplest form, direct displacement means that an illegal alien accepts a job that is currently held or would be acceptable to native workers. For expositional purposes, assume that the low-skilled domestic labor force is reluctant to take on steady jobs at or below the minimum wage. Then, jobs held by illegal aliens that pay minimum wages or below would not cause a direct displacement of domestic workers. But, the Immigration and Naturalization Service found in a 1975 survey that 35 percent of the illegal aliens that were apprehended were earning wages above $2.50 per hour. This figure was well above the minimum wage, which in 1975 varied from $1.50 for farm workers to $2.10 for nonfarm workers.[18]

That many jobs otherwise attractive to American workers are still given to illegal aliens is not surprising. Although these jobs are "acceptable" to United States citizens, they represent otherwise unattainably high wages to aliens. Attitudes are likely to reflect this difference. The illegal alien is an eager and pliant worker, not only because of the fear of deportation but also because the wage is special, not merely acceptable. An employer who does not discriminate by race, sex, or illegal alien status is thus likely to hire numerous illegal aliens for lower skilled jobs.

But even if domestic workers refuse to accept employment because the jobs are unattractive and the wages are marginally above public assistance levels, illegal aliens may cause an indirect displacement effect. To show this, it is useful to construct a rough hypothetical picture of the low-skilled labor market under the assumption that the illegal alien workers are forced to return to their home countries tomorrow.

In 1978 there were approximately fifteen million full-time equivalent domestic workers who were earning $3.00 per hour or less. Assuming an additional six million illegal aliens, that group constituted 30 percent of the work force employed that year in the lowest skilled labor markets. If all those workers were forced to leave tomorrow and the supply of low wage workers in this country were thereby reduced by 30 percent, wages at the bottom of the job ladder would be driven up significantly.[19]

A further assumption of this scenario is that the supply of "available" domestic workers would increase substantially as wages increased 10 to 20 percent above both the minimum wage of $2.90 and the welfare wage for the nonworking poor. This implies an increase in the wage rate of low wage jobs to an average of $3.40 per hour (in constant money terms). With the illegal immigrants out of the competition and with wages at $3.40 per hour, many domestic workers would now be interested in the previously "menial" jobs.

The next question, however, is how many of these jobs would still be available. Since demand curves for labor slope downward, an increase in wages means fewer jobs. Assuming an elasticity of unity, that is, for every one percent increase in wages, one percent of the jobs are scrapped, approximately 2 million of the 6 million jobs held by the illegal aliens could vanish. The job loss might be even higher if the favorable "attitude" of the aliens were a more important consideration than the wage rate. Hazarding a guess, perhaps another 1.5 million jobs would disappear for this reason. Thus, of the 6 million jobs filled by aliens, approximately 2.5 million would still be open at the higher wages demanded by the domestic low-skilled workers.

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[17] These views were originally presented in Michael L. Wachter, "Second Thoughts About Illegal Immigration," *Fortune* (May 22, 1978), pp. 80 – 87.

[18] See David North and Allen LeBel, *Manpower and Immigration Policies in the United States*, A special report of the National Commission for Manpower Policy, Special Report No. 24, February 1978, pp. 137 and 139.

[19] These figures were obtained from a tape of unpublished data for the May 1978 *Current Population Survey*.

Even if these assumptions are off, it is clear that there would still be potential for a dramatic improvement in the wages and jobs available to the domestic labor force. This optimistic report on wages and jobs would also translate into a large reduction in the equilibrium unemployment rate. As wages increased, it is likely that more individuals would be drawn into the labor force. If one-half of the jobs were filled by currently unemployed workers and the other half by new entrants into the labor market, the unemployment rate would still fall by approximately 1.25 percent. This reduction in the unemployment rate is of added significance because it is the full-employment or equilibrium rate that would be favorably affected.

The economic gains accruing to the low-skilled domestic labor force by sending the illegal aliens back to their home countries would be dramatic. The cost, however, would also be high. Perhaps the major cost would be to the aliens themselves and their home countries. Just as wages in the United States would increase, wages in the poor countries of Latin America, especially Mexico, would fall.

Domestically, the repatriation would presumably end numerous service and agricultural jobs and increase the relative prices of the associated consumer products.[20] Although short-run effects of a sudden departure of illegal aliens might be dramatic, either a slower departure or the longer-run effects of the quick exit could be easily handled. Many of the nonservice jobs could be mechanized and would become new job opportunities for the domestic population. The low-skilled service jobs might well disappear permanently due to the absence of workers willing to take on this employment. The economy, however, could do without these service functions. Indeed, there is a built-in mechanism that prevents serious disruption: For any job that is "vital," real wages will be bid up in the absence of illegal aliens to ensure the availability of domestic workers.

Perhaps the biggest domestic impact, however, would be the improvement in the status of the low-skilled workers relative to both higher skilled workers and capital. Since illegal aliens are substitutes for the lower skilled workers but complements to skilled workers, the middle and upper classes might suffer an absolute—as well as relative—decline in income. The relative decline might be significant, but the absolute decline is unlikely to be large enough to cause much discomfort. The exceptions to this, of course, are the skilled workers who work directly with, and the firms that hire, illegal aliens. These individuals and firms would suffer important losses as the wages of the low-skilled workers rose.

In contrasting the labor market of the 1980s with that of the 1970s, it appears that the major differences will be a shift from a relative surplus to a relative shortage of lower skilled, entry-level workers. That is, the illegal immigrants would remain a substitute for unskilled workers, but the percentage of native workers who are unskilled will decrease. As a result, the distributional effect of this demographic twist should be similar to the above scenario of a reduction in the number of illegal aliens. Both represent a decline in the percentage and absolute number of young, unskilled workers. But as the baby boom cohort ages, it will shift from a substitute to a complement in terms of its relationship with illegal aliens. That is, by the late 1980s and 1990s, those labor groups that were most hurt by competition from illegal aliens in the 1970s will have the most to gain from an increase in the number of (unskilled) illegal aliens.

In the battle over income shares among generations or skill groups, the political context may play an important role. In the demographic twist model, the oversized baby boom generation can "outvote" the undersized baby bust cohort. This former group can be expected to search for political solutions to its problems. They may vote to prevent either actual shortages of unskilled workers from developing or important relative wage adjustments from occurring. One approach to attain their objectives would be to vote for a more liberal immigration policy, legalizing and increasing today's flow of illegal immigrants and allowing them to become permanent residents.

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[20] For simplicity, I assume that only relative wages and prices are forced to adjust. The inflation rate itself is assumed to be constant.

Policy Dilemmas

Immigration policy has historically posed a significant dilemma due to the uneven distributional impact on different income classes. As indicated above, skilled workers tend to gain from increased immigration while unskilled workers lose. But while immigration has negative effects on the domestic lower income groups, it has strong benefits for the even lower income groups from neighboring foreign countries.

One aspect of this distributional dilemma that has not received sufficient attention is that, due to differential birth rates, the new entrant baby bust cohort of the 1980s will have a much higher percentage of minority workers than the current cohort. If faced by continuing pre-labor market discrimination that reduces their market skills, these workers may be hard pressed to face the competition of a large influx of low-skilled immigrants who are eager to work at or below United States minimum wage standards. Faced with a tight labor market for young unskilled workers, however, the disadvantaged workers over the 1980s may be able to make important gains. These potential gains would be blunted by legalizing and increasing the flow of foreign workers.

In discussing policy options three representative types can be identified: increasing the flow of legal immigration in an attempt to reduce the illegal component; adopting a "guest worker" approach similar to that used in Europe; or continuing the more laissez-faire "nonpolicy" that is currently in effect.[21] The lack of interest in dealing with the immigration question is in part a reflection of the significant political dilemma posed by this problem. But with the onset of the demographic twist in the 1980s, it will be increasingly difficult to avoid a conscious policy to control the number of new immigrants.

For numerous political and moral reasons, there is much to be said for allowing an increased flow of legal immigrants.[22] This approach deals with the problems of the potential shortage by augmenting the baby bust cohort with immigrants, but it has some significant problems. Already mentioned is the notion that any increase in immigration would have adverse distributional effects for the domestic low-income workers. In addition, there are reasons to believe that such a policy would not reduce the demand for illegal aliens. If new immigrants had the same welfare benefits as native workers, their work pattern might change and become similar to that of the native unskilled population. Presumably, their labor-force participation rates would then decline and they might be as unwilling to work in those "bottom rung" jobs as are native workers. The result would be renewed interest in illegal aliens who would be willing to work at the jobs that were unattractive to legal immigrants.

Due to opposition to both the *status quo* and increases in the annual quota of authorized immigrants, numerous variants of a "guest worker" policy have been suggested. Such a program would have greater flexibility than alternative programs since, in theory, the stock of guest workers can be adjusted, to some extent, in either direction.[23] This is particularly important with respect to the adverse impact of increased immigration on the economic gains of disadvantaged native workers. In addition, the availability of a "guest worker" policy is likely to make it much easier to enforce the laws against illegal aliens. The guest workers would satisfy the need (whether valid or not) of employers for an assured low-wage labor force in areas such as agriculture. If there were no pull from employers within the United States, the flow of illegal aliens would be likely to decline significantly.

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[21] Major policy innovations in the immigration area are not currently popular in Washington or, indeed, elsewhere in the country. That such measures are now unpopular, however, only provides information on the current political views of the native population toward illegal aliens. That is, the illegal aliens are not perceived as being a "threat" that would necessitate the development of a stricter policy or prevent illegal entry. If the environment changes, and illegal aliens are perceived as posing a threat to the voting population in the United States, an enforcement mechanism could be developed. A policy to restrict illegal immigration would likely be composed of three elements: a requirement that workers be able to prove their citizenship by carrying working papers or a "work eligibility card"; costly economic penalties assessed against employers who hire illegal aliens; and a strengthening of the policing function of the Immigration and Naturalization Service.

[22] The political and moral issues are stressed by Wayne A. Cornelius, "Illegal Mexican Migration to the United States"; Michael J. Piore, "The New Immigration and the Presumptions of Social Policy"; and Bruno Stein, "Immigration as a Social Issue," in IRRA, *Proceedings of the Twenty-Seventh Annual Winter Meeting*, pp. 341 – 42.

The guest worker approach raises important social and political questions due to the unequal rights accorded these workers. Although guest workers would presumably be covered by minimum wages, they would not be eligible for many social welfare programs, especially those that affect the "cost of being unemployed." Indeed, the basis for the guest-worker approach is that individuals (and their families) remain in the United States only as long as they are working or actively searching for work. It is precisely this status inequality that provides protection to the native work force and makes guest workers an alternative to illegal immigration.

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[23] But see the Martin and Miller article in this symposium for a discussion of the generally unfavorable experience of Western European nations in adjusting their stocks of guest workers.

6.

The New Sweatshops: A Penny for Your Collar

By Rinker Buck

"Investigators found one woman making 200 shirt collars a day for a penny each. If she works hard, that's $2-a-day take-home pay."

It's a part of Chinatown that no outsider is meant to see.

Walk along Canal or Mott Street on a cold day when the air is still, and you'll see countless blasts of steam rising out of stovepipes and open windows from the tenement lofts above. Each rising cloud represents another shirt collar or jacket lapel ironed into a finished garment on a steam press—sent on its way to the department-store racks. Upstairs, at the levers of each press, stands but one of the 9,000 or more garment workers who toil each day in the 400 factories in this 35-block neighborhood.

Unseen, unheard of, and virtually unprotected by law, they man the presses and the sewing machines that are keeping the garment business—New York's largest industry—alive in this city. Many of them are aliens, here without identity papers, work permits, or any indication at all of who they are and where they came from. For ten, eleven, sometimes even twelve hours a day, they work under conditions that range from the tolerable to the squalid, earning wages often so low—bringing home in some cases less than $50 a week—they approach the closest thing we have in this country to a slave-labor system. But the many tenement lofts above Chinatown are a closed system, impenetrable to all but those who work there. The unions that want to represent them and the government agencies charged with protecting their rights—not to mention the clothing manufacturers who hire them—are powerless to change what's been happening beneath those clouds of steam.

With these new sweatshops, Chinatown is only the beginning. The picture is the same along lower Broadway, in hidden pockets along Seventh Avenue in the garment district, and clear up the West Side of Manhattan into Washington Heights and Inwood. Out in the boroughs, they are to be found wherever there is a sizable concentration of immigrant groups, predominantly Hispanic and Asian. In Brooklyn, near Bush Terminal, Fort Greene, and Bedford-Stuyvesant, the shops are manned and operated by Haitians, Mexicans, and Dominicans. Under the elevated IRT line along Roosevelt Avenue in Queens, from Woodside to Corona, entire blocks are given over to the garment factories of Colombians, Ecuadorans, and Koreans. In the South Bronx, the factories are often controlled by Puerto Ricans and Jamaicans.

No matter what the nationality, the city's sweatshops look pretty much the same wherever they are. Usually they're in grimy walk-up tenements, converted apartments, or storefronts, their windows closed to the scrutiny of the outside world by a coat of gray paint or soiled sheets hung with tacks. Only the signs posted outside—Se Necesita Operadora con Esperiencia en Maquina de Coser ("Experienced Sewing Machine Operator Needed")—and the lights that sometimes burn all night indicate what's going on within. Through the peephole of a locked door, you can sometimes see, spread out over floors littered with bits of fabric and thread, rows of women bent over their work, sewing amid a hum of machines that is not so much oppressive as it is annoyingly routine.

There may be as many as 4,500 such establishments citywide—U.S. Department of Labor officials estimate there are 1,500 in Brooklyn and Queens alone—and they employ anywhere from 50,000 to 70,000 workers. Virtually all the shops are non-union, unregulated, and patently illegal—a burgeoning sector of our local economy willfully violating just about every fair-labor standard. *Women's Wear Daily* has reported that thousands more sweatshops exist in California and New Jersey.

"In terms of wage exploitation and substandard conditions, the garment district of New York is one of the three worst areas in the country for aliens," says Massachusetts Institute of Technology political scientist Wayne Cornelius. "The only other places where you'll find conditions as bad are in the Los Angeles garment district and the Rio Grande Valley agricultural region in Texas."

And this view is bolstered by one investigator for the Labor Department: "Just a few weeks ago, I interviewed a woman who is paid 1 cent a collar on the piece rate. Working hard, she is able to make 200 collars a day. *That's $2 per day!* This was in 1978, in Brooklyn, in the city of New York."

An extreme example? Perhaps, but the files of Labor Department investigators are filled with cases of aliens working 50 and 60 hours a week and taking home as little as $60 or $75. Said another investigator, "The big problem here is that the sweatshops all work on piece rates. It's very common to see women sewing sleeves, say, or

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“The Labor Department estimates there are 50,000 to 70,000 people working in illegal and unregulated sweatshops throughout the city.”

shirtfronts, for 5 cents a piece. They work like hell for an hour, and maybe they can make 30 of those. That doesn't come anywhere close to the minimum wage of $2.90 per hour.”

Minimum-wage and overtime violations like these, unlawful piecework taken home, and child labor are the norm, not the exception. There are even documented cases of sweatshop managers' refusing to pay a worker's wages simply because they know that their predominantly alien work force has no way of seeking redress for their grievances.

“We're talking about a whole new ethic, an entirely new group of nationals moving into the garment industry in New York,” says Al Morris, a veteran of the New York office of the U.S. Immigration and Naturalization Service (INS). “The old Jewish and Italian sweatshops are dead. Now we're finding a new generation of Ecuadorans, Greeks, Koreans, Peruvians—you name it—opening up their own shops. Many of them are here illegally, and most of the people they hire are illegals too.”

“There's a very good reason for these sweatshop managers to find illegals to work for them,” says George A. Montoya, chief of general investigation at INS. “These groups are willing to come in, produce at top efficiency ten hours a day six days a week, and never even think about ‘union scale’ wages. Often they're all members of a single family or extended sibling group, working together as a cohesive unit. They don't consider the conditions oppressive at all.”

That all this is true I confirmed last year in a month-long series of visits to a number of these new sweatshops. But this story is one that cannot be reduced to the simple terms of the greed of a few managers versus the rights of thousands of workers. For one, the sweatshop system relies on the grudging complicity of a whole population of both workers and managers, united by strong ties of family, friendship, and national origin. They see the paternalistic system under which they work as the only way to begin the climb up the economic ladder. True, they are victims, and the wages they earn here are a pittance by American standards, but for the most part, it's a fortune compared to what they once earned in Hong Kong or Panama City. So more often than not, the last thing they want is for “Justice” to barge through the sweatshop doors in the form of an immigration agent, a Labor Department investigator, or a union organizer.

Take the case of Maria Ortiz (not her real name), a twenty-year-old Colombian I interviewed in early December, shortly after she was arrested during an INS raid at a Queens sweatshop. Maria, a slender, carefully dressed woman with a pretty round face and smooth skin, has lived with relatives in Corona since she came here on a student visa last March.

All year, she attended a high school tutoring program in Queens. But in October, Maria decided to look for a part-time job to earn spending money for Christmas. It took Maria less than an hour to find work, just a few blocks from her home. When she walked into Elsy's Fashion, Inc., on 108th Street in Corona, Maria says, the Colombian manager told her that she could begin work that day for what she was told was the then minimum wage, $2.65. Elsy's had just taken on a contract to sew dresses for a Manhattan manufacturer, Minerva Fashions.

Maria was elated to find a job, but even more surprised to have been offered the minimum wage. But the work was hard. “It was tiring. The lady who ran the shop would tell me how to complete each step. It took me between two and three hours to do each dress at first; later I could finish them in under two hours. I liked one of the dresses I made so much that I asked to buy it back from the shop. They gave it to me at half price, for $18.”

But after Maria had finished her first morning's work of three dresses, she learned what the “minimum wage” teaser had meant; the manager told her that she was due $2.65 for each finished dress on the piece rate. This came to a whopping $7.95, from which the manager subtracted $1 for “Social Security” (even though Maria didn't have a card) and another $5 as a “security fee.” This, Maria was told, was only to guarantee that she would return for work the next day, and would be added to her earnings for tomorrow—but only, of course, after *that* day's security fee was deducted. For over six hours' work, Maria made $1.95. In fact, for the next two months she never took home more than $10 a day.

Did she feel like complaining? “Not really. Most of the other women in the shop were in the same position. They came in at nine or ten in the morning and worked until ten at night. They worked Saturdays, Sundays, sometimes more than 60 hours a week. How could I complain compared to that?”

And, like Maria, some of the other women in the shop—where the manager refused comment—were working without visas, Social Security cards, or any other documentation that would make their status here legal. “The manager preferred it that way,” said Maria. “They wanted to hire people without papers. There was no union, and they knew they could get away with anything because we had nowhere to turn for justice.”

Indeed. Complaining—without the benefit of a green card — would mean risking exposure and deportation back home. “These people are running both ways,” said one official of the U.S. Labor Department's Wage-Hour Division in Brooklyn. “They're scared of their employers—usually straw bosses who threaten to have them deported if they complain—and they're scared of government.” The atmosphere of secrecy and fear that results has made for a highly mobile, cheap work force that perfectly fits the needs of a garment industry desperately searching for ways to cut costs. Another Wage-Hour official describes what is happening this way: “Typically, we're finding a large number of established Manhattan firms moving their work out to the boroughs to save money. They find a local manager—often a husband-and-wife team—who mobilizes a community of women on the piecework system. They'll stay in business as long as they can, violating minimum-wage laws, overtime, safety, and health conditions—everything—until we threaten them. Then they just go out of business and open up across the street.”

“I'll tell you why this network of shops has been spawned out there in recent years,” says the vice-president of one of the city's largest sportswear manufacturers, which employs only union workers. “It's cheaper. Under my current union contract, I pay, on average, 35 cents in benefits for every $1 I pay in wages. These illegal shops don't have to pay that, so right from the start they can do a job 30 percent cheaper than I can. It's an invisible empire out there; we don't even know who we're competing against."

And the sweatshop system is one that, so far, has insulated just about everyone involved from enforcement of fair-labor laws which require, simply, that employers pay the minimum wage of $2.90 per hour and time and a half for every hour over 40 in one week. Still, official industry spokesmen, despite overwhelming evidence to the contrary, often proclaim ignorance of the widespread labor abuses now common in their trade. Says Kurt Barnard, executive director of the Federation of Apparel Manufacturers, a major trade association: "I believe that it [labor exploitation] doesn't exist to any meaningful degree at all."

Often, manufacturers hide behind another convenient, and legal, excuse that completely absolves them of responsibility. Technically, once a manufacturer "contracts out" his work to an independent sweatshop, he bears no obligation to require that his contractor pay the minimum wage and Social Security or provide the minimum health and welfare benefits workers by law are entitled to. "It's not my concern how Elsy's [where Maria worked] treats its workers," said Jack Cohen, a spokesman for Minerva Fashions in Manhattan. "When I contracted that job out, I just wanted to see it done."

One veteran garment-district production manager, now with a prestigious Manhattan fashion designer, described one of the many methods by which manufacturers disguise their relationship with sweatshops. "Let's say I'm a manufacturer who wants to have a

How the Aliens Keep Their Jobs

For sheer futility, it's hard to imagine a government agency compiling a sorrier record than that of the New York office of the U.S. Immigration and Naturalization Service (INS).

During the fiscal year ending in October 1978, 200 INS investigators here spent $23.6 million locating a total of 10,607 "deportable aliens"—or roughly $2,225 for every man, woman, and child that the INS, in its own vernacular, deemed "wet."

If this doesn't sound like too high a bounty, then consider one more fact: Of these more than 10,000 "deportables," maybe half are actually sent out of the country. The others manage to elude deportation somehow—by jumping bail, marrying an American, or tying up proceedings against them long enough to establish permanent residence, or citizenship. And even the total number of aliens apprehended is but a fraction of the estimated 750,000 to 1.5 million living in the metropolitan area.

"We're accomplishing exactly nothing," said one INS agent after picking up two illegal aliens during a raid on a Queens sweatshop. "This is just petty harassment. We'll never contain the flood of illegals now coming to New York; the numbers are just too great."

Nevertheless, the garment industry remains a prime target for INS raids, a situation that has placed the agency under increasing fire from the International Ladies' Garment Workers' Union (ILGWU) in recent months. While federal labor officials say there are anywhere from 50,000 to 70,000 alien workers in non-union sweatshops, estimating how many thousands more there are in union shops is, for obvious reasons, very difficult. Officially, the union doesn't want to estimate their number, but at least two officers of ILGWU locals privately concede that the number of illegals in union shops may be as high as 30 percent of their total New York membership of 112,000.

Faced with such numbers, the ILGWU broke away from several AFL-CIO member unions last year when it issued a strong condemnation of INS raids and harassment of illegals. Last summer, the ILGWU filed a suit in California in an attempt to require INS to produce search warrants specifying either names or probable cause for entering a factory before a raid takes place. At the same time, ILGWU organizers have begun informing employers and shop managers of their rights under immigration law, encouraging them to bar entry by INS inspectors unless they produce a proper warrant.

Said one angry INS agent, "Suddenly the union is telling us we can't come into *their* shops, but they don't seem to mind if we raid the non-union places. The union has, in effect, asked us to be its tool."

"Nonsense," says Shelley Appleton, the ILGWU's general secretary-treasurer. "We don't want to use the INS to fight our battles for us, but at the same time we can't control zealous field organizers who call INS to raid illegal shops. There have been plenty of times we've organized a shop, set up elections, and then the day before the union is set to move in, INS raids the place and arrests everyone."

—R.B.

" 'The manufacturers send the work out to women who work at home for practically nothing,' says one official. 'How can we investigate this? You need a warrant to enter homes.' "

Intolerable conditions: Worker exploitation and an atmosphere of fear make the new sweatshops the closest thing America has to a slave labor system.

lot of garments made cheaply while still keeping in good stead with the union. I can send the non-union shop the fabric it needs to do the work and then bill them for it. This is merely a paper transaction—they're not going to pay me for that fabric at all. When they've finished the work, they send me back the garments and get paid on a 'package rate.' Now, my labor costs are never going to show up in this transaction; my books will never show that I have Social Security or tax deductions to make because all I've done is buy a finished product."

The result? Does such a manufacturer care what kind of working conditions prevail in his "contract" shop? "Of course not. Would you? If you go into a store to buy a shirt, you don't ask whether or not the worker who made it earned enough to eat, do you? Neither do we."

The government has virtually no leverage with the small contractors either. Investigations of a single shop can take weeks and the Department of Labor's Wage-Hour Division has only eleven investigators to cover *all* industries in Brooklyn, Queens, and Staten Island, of which sweatshops are but one area.

"These are shops on wheels," says Max Zimny, general counsel of the International Ladies' Garment Workers' Union (ILGWU), which has been trying for years to organize the illegal shops. "We might get a track on one of these shops and advise the government to investigate, or try to organize the place ourselves. Pfft . . . they're gone. It may be six months or a year before we even locate them again."

Just last month, for instance, the Department of Labor concluded a year-long investigation of Veralee Sportswear, Inc., of 325 West 37th Street. Investigmors documented that Veralee owed over $15,000 in wages and overtime pay to 38 employees, many of them aliens who had been fired before they could collect their first paycheck. By the time the Labor Department found a federal judge to order Hal Stridiron, Veralee's president, to pay the wages owed, he had left town; when officials traced him to Hoboken, he moved to contest the jurisdiction of the court.

The assignment of piecework sewing at home is another increasingly common—and generally illegal—method of production in the garment trade. "Employers assign 'homework' to avoid

> "Says one manufacturer about sweatshop labor: 'When you buy a shirt, you don't ask if the worker who made it earned enough to eat.'"

overhead, hide payroll costs, and completely escape the scrutiny of federal laws," said one Labor Department official. "They send the work out to women who work at home for practically nothing. How can we investigate this? You need a warrant to enter homes. It's a whole area of labor exploitation we can do nothing about."

At the center of the sweatshop system exists the breed of silent, ever elusive "contract managers" whose job is to keep the flow of garments moving between manufacturer and sewing ladies. They are usually nothing more than middlemen, struggling to survive as marginally secure entrepreneurs on the very fringes of the garment industry. Often they are aliens themselves, who, either for convenience or the desire to maintain secrecy, exploit aliens exclusively of their own nationality. Says Shelley Appleton, general secretary-treasurer of the ILGWU: "These guys have looked the same and acted the same way for as long as anyone can remember. The bosses always exploit their own nationals. When Jewish bosses ran the garment trade, they hired only Jews; Italians exploited Italians; now it's Dominicans exploiting Dominicans."

One of these contract managers is Juan C., an Ecuadoran who arrived here from Quito eighteen months ago with about $5,000 in life savings. Six months ago, he spent most of that setting up a small storefront, off Roosevelt Avenue in Corona, with a dozen sewing machines. With a monthly rent of $175 and heat, light, and electricity bills that total almost $200, he says he finds it difficult to stay open even when he's busy sewing blouses or skirts seven days a week.

His week usually begins with a trip to the garment center, where he scouts around for work among a half dozen or more manufacturers he has come to know. "A manufacturer will tell me he has 2,000 twelve-piece blouses he needs sewn. I tell him I need at least $10 per blouse to do a decent job on a garment that complicated. So then he tells me to get lost—he offers me $2. If I don't take that, he tells me he can have it sent to Taiwan or South America somewhere, and have it done for 50 cents. So we haggle—sometimes I might bring him up to $4 per blouse.

"Now, you tell me, how can I pay someone 'union scale' [$3.80], or even the minimum wage [$2.90], when I'm only getting $4 per blouse? With overhead and everything else, I may be able to pay the ladies $1.20 per blouse, but that's tops. There's nothing on paper. I get paid in cash."

Says one industry source: "All of the contractors are getting squeezed, even the legitimate, established places. Contractors are getting the same today for quality goods as they were getting for junk items five years ago. This pushes them to pay employees off the books, or work them overtime without pay. The only alternative for many of them today is to work clandestinely."

Against this, government and union attempts to investigate and eradicate abuses seem comically fruitless. "These shops are inscrutable," says Al Morris. "Chinatown is a perfect example, but it's the same in the Spanish-speaking areas too. The shop managers and employees just sit there, smile at us, and say nothing. There isn't a damn thing we can do."

The Labor Department receives frequent unconfirmed reports of uncompensated overtime and payroll irregularities in union and non-union shops in Chinatown. But when it comes time to investigate, according to Norman Bromberg, head of the Wage-Hour Division for Manhattan, "we just can't breach the wall of silence down there. We had a case recently where the only non-Chinese worker in a sweatshop told us that the place was working nights and weekends. We considered staking it out, but none of the workers would talk. Now, if they don't talk to us, you can bet they'd never appear in court to testify against an employer."

And the union also is frustrated. "Chinatown is a clan, a closed, secretive organization," says the ILGWU's Zimny. "We try our best, but an awful lot goes on down there that we never even hear about." And he's speaking here, remember, of a sector of the sweatshop network that underwent unionization years ago. If the union is finding that kind of resistance in its own shops, you can imagine the barriers to organization elsewhere.

For all these reasons, it's safe to conclude that nothing dramatic will be done soon to crack down on labor conditions in sweatshops. But there's another, even more critical underlying force virtually guaranteeing the continuation of sweatshops in New York—one that explains why there seems to be so little political or social pressure to end the slave-labor conditions prevailing in so much of the garment industry. That is, simply, that the garment industry here has been in trouble for quite some time now, and the prognosis is for continued deterioration year by year. At a time when every effort is being made to keep the industry here at any cost, the last thing people want to consider is just what effect a crackdown might have on its work force.

In November, the Federation of Apparel Manufacturers submitted a thirteen-point plan to the city for improvement of the business climate here. Says executive director Kurt Barnard, "We're fighting to cut the costs of electricity, reduce taxes, and end such exorbitant fees as the garment-district freight-handling surcharge paid to truckers—just to keep this industry alive in New York. In that context, labor conditions are of absolutely no concern to us."

Seymour Ehrlich, chief of cooperative programs with the federal Bureau of Labor Statistics here, describes the situation this way: "The relative attractiveness of the apparel industry has dropped steadily since 1950. Why? When a major industry experiences shrinkage, wages just can't go up during the effort to cut costs. Now, without a lot of fresh capital or new business around, there simply isn't that much left to filter down to workers."

But theories and rationales have little effect or meaning for the thousands of poor immigrants who end each year in our ghettos. The moving force behind their migration is something far greater and more powerful than what unionization, government investigations, or any sudden willingness of the garment industry to police itself will accomplish. Toward the end of my research, I interviewed a Peruvian garment worker who had already been deported twice, jumped bail, and was now in custody facing certain deportation once more. How does she feel?

"I trust in God. I wasn't doing anything wrong working here. I was just working for others, for my family. They can do whatever they want with me, as long as I can still work for the poor like myself. And they can send me away. But after a short vacation at home, I'll be back, on the first plane that will carry me to New York." ▬

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Immigration levels depend on the needs of the U.S. economy—not, by and large, on what Congress allows. Current efforts to reform the immigration system fail to recognize that fact and may therefore be making the situation worse.

THE "ILLEGAL ALIENS" DEBATE MISSES THE BOAT

by Michael Piore

Recent immigrant groups have seldom been popular in America, particularly when their native language is not English and their skin is not white. Hence it is not surprising that the present wave of immigration from Mexico and other Latin American countries has touched off political controversy. The fact that many of the immigrants come without proper papers—making them "illegal aliens," in the unhappy phrase of the moment—only exacerbates the situation. Conservatives fear for American purity. Unions fear for American jobs. Well-intentioned reformers wonder how to do justice to the undocumented immigrants who are already here without inadvertently opening the floodgates. President Carter's recent proposal to legitimate the status of some aliens while strengthening border enforcement is a politician's accommodation to these conflicting pressures.

Most of the worry and most of the good intentions, however, are misplaced. In the current debate, illegal immigration is frequently seen as an oversight; if the laws were better enforced, Americans could calmly provide for limited legal immigration and protect themselves from an uncontrollable influx of foreign workers. That is a bit like thinking that illegal liquor during Prohibition was an oversight. If people want something that is prohibited by law badly enough, a black market will develop. Extralegal immigration seems to reflect the fact that legal immigration quotas don't let in as many immigrants as the American economy needs. In this we are not alone. Europe too has an immigration "problem."

Industrial societies seem systematically to generate a variety of jobs that full-time, native-born workers either reject out of hand or accept only when times are especially hard. Farm labor, low-level service positions like dishwasher or hospital orderly, and heavy, dirty, unskilled industrial work all fit into this category. Jobs like these—referred to by manpower analysts as jobs in the "secondary labor market"—offer little security, opportunity for advancement, or prestige. Often they are seen as degrading. Finding people to fill them poses a continual problem for any industrial system.

Long-distance migrants from relatively backward rural areas provide one way of solving that problem. Indeed, most industrial countries have employed immigrant workers in these jobs almost since the beginning of the industrial revolution. Such immigrants typically view their stay in the industrial area as brief and purely instrumental. They plan to accumulate some savings quickly, return home, and invest their earnings there. They are untroubled by the lack of job security and promotion opportunities in secondary jobs because they do not plan to remain long enough for either to matter. They are unaffected by a job's menial status because their industrial work is well

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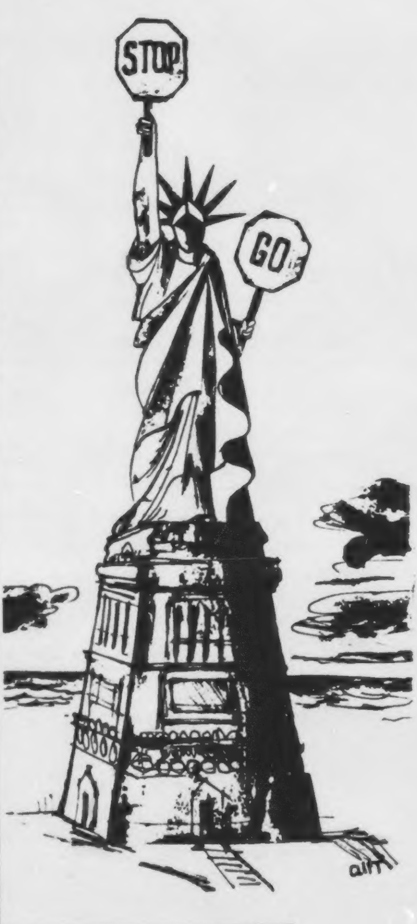
removed from the social setting of their home, where they derive their status and self-image.

The problem with temporary immigration as a solution to the low-status job problem is that, although the migrants do not plan to remain long, many nonetheless stay. Some develop permanent commitments to the industrial society. They have children who are born or raised in the industrial setting. The children, whatever their legal citizenship, view the labor market with the same eyes as other native-born workers. They "belong" to the industrial societies, and the work they perform there defines them as social beings. They thus feel degraded by low-status work, and they care deeply about matters like job security and advancement.

Nothing in the migration process, however, ensures that this second generation will be able to move up to higher level jobs. Indeed, industrial societies appear consistently to disappoint second-generation expectations in this regard. That disappointment has in turn led to enormous social tensions. The sit-down strikes of the 1930s, which sparked the industrial union movement in the United States, stemmed at least partly from the resentment of workers whose parents had immigrated just prior to World War I. Similarly, the ghetto disturbances of the 1960s can be seen as a revolt of black migrants' children against a society bent on confining them to their parents' jobs.[*]

A process that generates such tensions also creates myths and misconceptions. It is widely believed, for example, that immigrants replace native-born marginal workers—notably young people and women with families—thereby increasing unemployment among these groups. At some times in the past that may have been true. As Paul Osterman suggests, however, there is no evidence that the opportunities available to American-born marginal workers have changed significantly since the current wave of immigration began in the late 1960s (see "Understanding Youth Unemployment," *Working Papers*, January/February 1978). Women and youth who take low-level jobs are typically willing to work only in certain places and during certain hours, many don't want low-level jobs at all. So they are poor substitutes for immigrants.

Another misconception is that temporary immigration invariably benefits the migrants' home countries by generating a flow of income from the more developed society. Migration does have a variety of effects on the migrants' places of origin,



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[*] In the United States, the internal migration of blacks from the Deep South to northern cities in many ways resembled the international immigrations that are the subject of this article. When black migration is being discussed, of course, the phrase "native workers" refers to natives of northern urban areas.

Immigration generates enormous social tensions. It also creates myths and misconceptions — for example, the notion that immigrants replace native-born workers.

and in some instances may stimulate economic development there. But it also raises expectations among the people back home, and over time begins to change the structure of values. Traditional activities are degraded, people become less willing to perform them, and in some cases traditional industries are destroyed altogether. Anyone looking at southern Italy, for example, would be hard put to say that the years of migration from there to the United States and more recently to northern Europe have uniformly benefited the home region. Nor would rural Puerto Rico be an advertisement for the salutary effects of continuous long-distance migration.

A third misconception is that poverty and population pressure in underdeveloped areas are the prime causes of large-scale migration. In fact, income differentials have existed for long periods of time without stimulating migration. Migrants themselves typically dislike the industrial areas. They are ordinarily interested only in the money that can be earned there, and then only if they are able to accumulate savings. When they cannot find a job quickly, they return home.

The true determinant of migration flows is the process of economic development in the industrial region, particularly the number and character of jobs available. Migrants frequently learn about jobs from recruiters for industrial employers. The current undocumented migration from Mexico and the Caribbean began in this manner in the late 1960s. Reserves of labor in the black South were being depleted, and what labor remained there was increasingly being absorbed by southern industry. In the North, the black labor force had come to be dominated by a second generation of workers intolerant of the jobs their parents had held. So employers went looking for Mexicans, Puerto Ricans, and other Latin Americans. (The black migration from South to North itself had originated in employer recruitment shortly after World War I. Businesses wanted to replace the European immigration flow interrupted by the war.)

A final misconception is that jobs held by immigrants somehow replace jobs held by native workers. In fact—though the evidence is not all in—the migrants' jobs appear to fall into two categories. In one category are jobs that complement, or indeed make possible, the "good" jobs held by natives. Some declining industries, for instance, provide good jobs but also depend on a supply of

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Michael Piore teaches economics at MIT. This article is condensed and adapted from Birds of Passage and Promised Lands, *a manuscript prepared for the National Council on Employment Policy, September 1977. The research on which it is based was supported by the Ford Foundation through a grant to the National Committee for Full Employment, by the Alfred P. Sloan Foundation, and by the U.S. Department of Labor. The author is solely responsible for the views expressed in this article.*

low-wage labor, without which they would go out of business or move abroad. The shoe and textile industries in New England are examples of this: white Americans work as cutters or machine repairers while poorly paid immigrants do most of the stitching, last pulling, warehousing, and the like. Other industries guarantee employment by transferring peak-demand work to subcontractors who employ immigrants and other low-wage labor on a temporary basis.

In the second category are jobs that don't necessarily complement native-held occupations but which contribute to the standard of living of better-off groups. Household workers typify this second category; so do some groups of restaurant workers, delivery people, and janitors.*

There are some native-born workers, of course, who share the secondary labor market with immigrants. The impact of immigration on these workers in uncertain. Their primary interest, presumably, is in advancing to higher-status, more secure jobs. If the jobs they share with migrants are improved when there are fewer workers to fill them, then native-born workers might well be better off with less immigration. But if the jobs are essential to the continued functioning of the system—and if they can't be upgraded without radically changing the system—then the society will look for other ways to maintain the labor supply. In the medical-care industry, for example, which is now hard pressed to meet demand, it seems unlikely that hospital orderly and other low-level jobs will suddenly become first steps on a career path that leads to nurse or doctor. In heavy industry, it seems unlikely that we will do away with peak-demand subcontracting to nonunion firms, particularly when workers in unions are beginning to demand lifetime job guarantees. It seems much more likely that we will seek to curtail the upward mobility (through discrimination or other means) of groups that presently hold low-level or temporary jobs, and to expand that traditional labor force by changing institutions like unemployment insurance and welfare benefits.

Given all these considerations, an ideal immigration system from a policy maker's point of view should seek several objectives. It should minimize the number of jobs for which migrants are required in the first place, since large-scale immigration disrupts the migrants' places of origin (and may in fact generate unfulfilled expectations on the part of the migrants themselves). It should minimize the degree of competition between nationals and foreign workers in the first generation, since too much competition means both groups will suffer. It should aim at keeping the second generation as small as possible, since the expectations held by the children of immigrants are particularly unlikely to be realized. And finally, it should maximize the chances of upward mobility for whatever second generation does emerge.

Evaluated in these terms, existing policy is nowhere near the failure it is presumed to be; in fact, it is a more rational approach to the problem than any of the protagonists in the current debate is willing to admit. Ironically, the principal institutional feature that makes the system work well by these lights is the very feature that makes it appear so irrational: the fact that it is underfunded. The Immigration and Naturalization Service (INS) has a budget so small in relation to the magnitude of immigrant flows that it cannot possibly enforce the law as written. That fact, plus the fact that it has never received any congressional guidance on priorities in spending, means that the INS has tremendous discretion as to when and where the law is enforced. On the whole, the service seems to utilize this discretion to minimize the competition between undocumented aliens and other workers, and to realize some of the other objectives outlined above.

Patterns of enforcement activity are revealing. For example, the INS seems to give priority to apprehending undocumented workers, as opposed to other undocumented persons, and to those workers in relatively high-paying, high-status jobs. The lowest level, most menial job categories—like household help—receive virtually no attention. Also, the service concentrates its enforcement activities in the Southwest. That is ostensibly because of the heavy traffic from Mexico there, but the effect is to drive undocumented Mexicans out of a region where they are in direct competition with Mexican-Americans and toward Los Angeles, San Francisco, and the Midwest. There, the native wage scales are higher, and low-wage labor is scarce.

Some INS offices make a practice of varying enforcement activities seasonally so that alien workers in effect complement native-born youth in the labor market. When school lets out in June, the Service raids various restaurant and hotel jobs to open them for young people; when school resumes in the fall, enforcement is relaxed. Enforcement also varies with the business cycle in some industries. In the 1974-1975 recession, for example, the service actively pursued Canadian workers in the construction industry. But it had tacitly allowed them to enter during the preceding boom when there had been a shortage of skilled Americans.

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* Both categories fall into the secondary labor market of low-wage, low-skill jobs with frequent layoffs and high turnover. Legislative standards establishing minimum wages and working conditions apparently set a floor on the secondary labor market, and these standards probably respond to the need for workers in the first category. If minimum standards are set too high, then some "supportive" secondary jobs will be eliminated and the employment of native workers threatened. If they are too low, employers will be tempted to transfer more work into the secondary sector of subcontractors and the like; again, more native workers would be out of a job. Demand for workers in the second (standard-of-living) category is probably not so important a factor in determining the size of the secondary labor market. Given the ease with which new migration streams appear this must be the case, or there would be no limit to the menial labor the American economy absorbs.

INS agents recognize the power that the current institutional framework puts in their hands; they are anxious to justify the way they exercise that power, and they speak quite freely of their enforcement philosophy. Their rationale is complex, with implications extending beyond the immediate issues at hand. But the goal of maintaining a labor force that complements native workers under varying economic conditions is a prominent part of it.

The present system is least effective in its handling of permanent settlement and the second generation. To the extent that undocumented workers are indeed illegal, one would expect them to live at the margin of society, minimizing their children's exposure to the institutions and experiences that would help them advance in the U.S. labor market. For example, parents are often afraid to send their children to school or to seek out medical attention for fear of making their presence known to authorities. Again, however, these effects are greatly mitigated by the way the law is enforced. The chances of getting caught are in fact small, enforcement patterns depend more on the labor market than on immigrants' utilization of public services, and the INS already has so much more information than it can possibly act on that it pays little attention to the kind of data aliens fear.

The other mitigating factor is that the de jure immigration system is not nearly as divorced from the prevailing de facto system as the term "illegal" suggests. It actually provides a variety of channels through which those who become permanent settlers and have children can regularize their status. Several mechanisms (which from another perspective are highly invidious and inequitable) operate here. The most important is the system, termed in the business "equity," whereby people with close relatives in the United States are given priority for immigration visas. Together with the fact that children born in the United States are automatically accorded citizenship, this system has assured that immigrants who have children in the United States, return to their home countries, and then apply for legal entry will almost certainly be granted legal status.

A second procedure, which enhances the value of equity as a means of regularizing one's status, is voluntary departure. A record of illegal entry into the United States would normally preclude subsequent entry through legal channels. However, few aliens apprehended by the INS undergo the formal deportation procedures necessary to invoke this legal barrier. Most leave through voluntary departure, a kind of nolo contendere device in which the illegality of the previous entry is never formally established. The INS prefers this procedure since it saves a good deal of time and expense; it also preserves equity. (I have seen immigration judges grant voluntary departure in place of formal deportation for no reason other than that the defendant had an American-born child.) Voluntary departure also means that an immigrant need not wait for his documents at home, a wait that can be extremely long. It is apparently quite common for people to enter without documents, work, establish the relationships on which equity is built, return home to file papers, reenter without documents, continue working until notified that the papers are ready, return once again to pick up the papers, and finally reenter the United States as legal immigrants.

While the combination of voluntary departure and equity appears to have been the most important method of legitimating undocumented workers, other procedures work toward the same end. For example, it is relatively common for the INS to parole an undocumented worker whose papers are in process, so that an apprehended alien whose status seems likely to be regularized need not leave the country even temporarily. Another common practice is for immigrants to obtain work permits for "labor-scarce" occupations; frequently the jobs in question were acquired by the immigrants when they were undocumented workers, and the main proof that an immigrant is required to fill the job is the fact that he or she is already holding it.

The success of the system in terms of the goals outlined is evident from available statistics. It works best for Mexican immigration on the West Coast. Most Mexicans appear to enter the country simply by crossing the border illegally. Many are apprehended and quickly returned to Mexico. There, by all reports, they simply turn around and reenter, in most cases successfully. The immigration is temporary: the best available data suggest that the average Mexican returns home every six months, and that the total length of stay averages two-and-a-half years.[*] Family formation, which may be taken as both an indicator of permanent settlement and a measure of the size of the second generation, is low. Only 11 percent of apprehended aliens in one sample had a spouse in the United States, though 50 percent were married; similarly, while 50 percent had children, fewer than 10 percent had children in the United States.

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[*] This and subsequent data referred to in this article are drawn from David S. North and Marion F. Houstoun, *The Characteristics and Role of Illegal Aliens in the U.S. Labor Market: An Exploratory Study* (Linton & Company, March 1976).

Most Mexicans seem to work in the kind of secondary jobs that complement native workers, penetration into higher-wage employment has been slight. The equity system works as described to legitimate those who do acquire permanent attachments in the United States. It also presumably facilitates their children's access to the institutions that will help them advance.

The principal feature that makes the system work well is the very feature that makes it appear so irrational: the fact that it is underfunded.

The system operates somewhat less effectively for non-Mexican workers from the Western Hemisphere. Most of these immigrants seem to enter as visitors or tourists, with documents but without the right to work. They violate the terms of their entry first by taking a job and then by staying in the United States after their visas have expired. The migration of these workers also appears to be essentially temporary, with relatively low rates of family formation, and they too are concentrated in the secondary sector of the labor market. But each of these characteristics is decidedly less pronounced than with the Mexicans. Migrants from elsewhere in the hemisphere go home less frequently than Mexicans (every 22 months, on the average), a larger proportion (28 percent) have families in the United States; they send less money back to their places of origin, and they have advanced farther up the occupational hierarchy into positions competitive with native workers.

Once we recognize the way the present immigration system actually operates, it is evident that certain minor changes in obscure characteristics of the system can produce substantial gains in terms of the goals outlined. Other proposals, which at first glance seem beneficial, are likely to have negative results.

The most obvious defect of the present system is the disparity between the experience of Mexicans and that of other Western Hemisphere aliens. No single explanation accounts for the difference between the two populations, but discussions with workers themselves suggest that a major factor is simply the relative difficulty of reentry. Mexican workers have little trouble moving back and forth across the border. Other workers, who must enter on regular documents, have great difficulty in doing so. The documents are difficult to obtain in the first place: the State Department officials who issue them are highly suspicious of would-be entrants' motives. The migrants fear that, once they have violated the terms of their entry, they will be unable to obtain entry again. Hence many feel obliged to stay on much longer than they originally anticipated. In the process, they develop attachments—often in the form of second families—that they never intended, but which make it still more difficult to leave.

This paradoxic effect of a tight entry policy upon the size and character of the migrant population is not unique to the population of visa violators in the

On the Mexican border, attempts to "enforce existing policy" by tightening the border may achieve precisely the opposite of what is intended.

United States. Western European countries experienced similar effects in the last several years when they tried to curtail immigration by restricting entry. Workers already in the country feared that they could not reenter, and so delayed departure, often illegally. The result was that both inflow and outflow declined. The net effect may well have been an increase in the total population of aliens; certainly the size of the second generation has grown.

One obvious improvement in existing immigration policy would therefore be to issue tourist visas for relatively long periods of time, and to allow unlimited trips between the United States and the home country. Such a change need not affect the State Department's screening of applicants to exclude potential violators. It would simply recognize that a mistake in the screening process cannot be rectified after the fact, and that trying to do so will simply aggravate the problem. On the Mexican border, by the same token, attempts to "enforce existing policy" by tightening the border may achieve precisely the opposite of what is intended. Increased difficulty in crossing the border may simply cause those migrants who enter successfully to stay longer, and thus increase the rate of permanent settlement.

Three other troublesome changes, also likely to create more problems than they solve, are the recent restrictions on the number of legal entrants and on the exercise of equity conferred by U.S.-born children; the denial of public services to undocumented workers; and proposals to penalize employers for hiring aliens. The restrictions on legal entry and the exercise of equity were introduced by Congress last year as part of a revised distribution of immigration quotas. The reform was supposed to allow more equitable treatment of Western Hemisphere countries relative to European nations. In the process, though, Congress put a limit of 20,000 on immigration from any single nation, substantially below the roughly 70,000 immigrants who were being admitted at the time from Mexico. Congress also made it impossible for parents of U.S.-born children to regularize their status immediately. Since legal immigration and equity constitute the principal channels through which permanent settlers can regularize their own and their children's status, both restrictions may hurt the second generation's chance for advancement significantly.

That is especially likely to be true in light of recent trends at the state and local level to limit undocumented workers' access to public services. The most destructive of these efforts is the movement in New York City to bar the children of illegal aliens from the public schools. Given past difficulties even among those immigrant children with access to public education, it is hard to exaggerate the potential damage of this policy to the individuals involved and to the social stability of the city itself. Education is a sine qua non for any kind of upward mobility. Other services are important too. The lack of health care, housing programs, food stamps, and the like will certainly increase the number of second-generation immigrants with frustrated aspirations. To be sure, services are thought to attract even more migrants, and to encourage permanent settlement. But the evidence suggests that this kind of conscious economic calculation plays a minor role in people's decisions about migration. Social variables are far more important.

The proposal for reform that has received the greatest public attention recently would make employers liable for hiring illegal aliens. Here too the solution appears likely to do more harm than good. The issue of employer liability is related to the broader question of the size of the secondary labor market and the possibility of controlling its size through public policy. However large the secondary labor market currently is, its size seems to be limited by a network of legislative restrictions imposing minimal health and safety standards and mandating a minimum wage. The market for undocumented workers lies more or less within these standards. The survey cited above, for example, found that more than 75 percent of apprehended aliens were paid at least the minimum wage. Of those who worked in manufacturing, almost 90 percent earned at least the minimum. According to the same survey, the market for undocumented workers also generally respects a number of other legal standards involving income, social security, and unemployment taxation. It is somewhat less effectively controlled by union organization, but it is not totally beyond the unions' purview either.

Why the market for undocumented workers respects these standards is not clear. Such workers are an easily exploited group; they are afraid of being reported to authorities and are often willing to work for less than prevailing wages under substandard conditions. There is a lot of money to be made by forcing them to do so. One could easily imagine a market in which employers, by evading taxation and letting working conditions deteriorate, were able to make a higher profit while paying workers essentially what they take home now. It is possible that the market is already drifting in this direction: we have no good data about alien job characteristics over time, and the limited violations found in some recent one-shot studies may be the first signs of a long-run deterioration.

A chief factor in limiting abuse by employees, however, must be their legal situation. They risk nothing in employing the aliens; they risk substantial financial and criminal penalties for tax evasion and violations of labor and work standard laws. If penalties were imposed for hiring aliens, this balance would be upset. Many employers might feel that, having placed themselves in jeopardy by hiring aliens, they might as well take full advantage of the profits to be made. In many industries employing aliens, only a few employers need make this calculation to put the remainder under strong competitive pressure to follow suit.

To argue that the present immigration system meets some unrecognized goals, and that many reform proposals are misguided, is not to argue that the system is ideal. Three major reforms seem desirable: first, restrictions on the now-legal entry of higher level manpower; second, a concerted effort to reduce the size of the secondary sector; and third, the legitimation of the migrant labor force required to fill the jobs that remain.

The proposal to restrict higher level immigration follows directly from the analysis outlined above. Labor shortages in an industrial society are concentrated in low-level occupations. The trouble with migration as a solution to these shortages is a lack of opportunity in higher level positions for immigrants' children. Americans already have an accumulated obligation to black workers that we are unable to meet, and we simply cannot afford to allocate what high-level positions we do have to foreigners. Indeed, it appears that in a number of areas (notably medicine) immigration has provided a kind of safety valve against expanding domestic employment opportunities. Importing foreign doctors, for example, helps undercut pressure to expand medical-school enrollments in this country.

The idea of restricting the secondary labor market's size is less controversial. But many believe we can do so simply by restricting the number of unskilled immigrants. That, as noted, is a dangerous notion. If the restrictions are successful but the work cannot be dispensed with, social pressures will tend to create a labor force by restricting the upward mobility of native workers or immigrants of a previous wave (blacks, Mexican-Americans, etc.). The extreme limit of this process would be the reimposition of the kind of racial caste system that once prevailed in the South. If the restrictions on immigration are unsuccessful—and history tells us they are likely to be—the immigration becomes clandestine. It is then likely to escape legal restrictions upon the size of the secondary sector, and the sector will begin to expand beyond its present limits. Eventually, social forces will presumably react to check the expansion. But by that time we may have grown accustomed to the expanded standard of living that immigration permits, making it difficult to reverse the process. Efforts to curtail the secondary sector by curtailing the labor supply are therefore likely to have the opposite effect from what is intended.

The wiser course is to approach the problem

The present system meets some unrecognized goals, but it is far from ideal. Three major reforms seem desirable.

directly by tightening the legal standards that limit the secondary sector. At present, that means at least three types of reform: (1) an increase in the minimum wage, (2) more stringent health and safety standards, particularly for low-paying jobs, and (3) encouragement and protection for union organization. In this sense, current proposals to repeal Section 14(b) of the National Labor Relations Act, to extend to agricultural workers the right to organize and bargain collectively, to restrict employers' unfair labor practices, to index minimum wages, and the like, are tightly bound up with immigration policy and ought to be considered in combination with it. Finally, to make all of these laws more effective, the INS should be prohibited from responding to employer complaints about undocumented workers in their establishment once a union campaign is in progress or whenever an employer is found in violation of a labor statute.

The arguments against curtailing the secondary sector by restricting immigration lead to my final proposal: regularizing the status of existing immigrants. So long as the labor supply represented by these immigrants is extra-legal, there is a danger that the labor market will escape its present limits and begin to expand. Available data suggest that this has not happened yet, at least on a large scale, but the violations that have been found would be disturbing if they are the beginning of a trend.

Proposals for legitimating the existing migrant labor force have recently been outlined by the Carter administration. In evaluating them, it is useful to distinguish between more or less permanent settlers on the one hand and temporary workers on the other. The objective with permanent settlers should be to legitimate their status and that of their children as completely as possible, thus maximizing access to channels of advancement. For temporary workers, on the other hand, the objective should be legitimation without encouraging any permanent attachment. Because some temporary workers are likely to develop permanent attachments in any case, however, and because any administrative process is likely to make mistakes in its initial classification, there must be some mechanism by which temporary workers can convert to permanent status.

Carter's proposals handle this problem through a "two-tier" amnesty. One tier covers people who have been in the United States for over seven years. They would be granted immigrant status, enabling them to bring their families from home or to regularize the status of family members already here. The second tier would cover workers in the country as of last January who have been here less than seven years. It would give them legitimate status in the United States but would provide no rights for their families at home. The distinction can be viewed as corresponding to the distinction between permanent and temporary migrants. The correspondence is imperfect, since some permanent settlers will have been here less than seven years, and a number of temporary migrants could acquire immigration rights as relatives of those who fall under the seven-year amnesty. But it may be the best possible.

The chief problem is that no provision is made whereby current temporary migrants could convert their status. Conversion of this sort could be handled easily by giving temporary migrants priority in the allocation of existing immigration quotas, with the order of priority based on length of stay in the United States. People should be able to exercise this priority at any time in the future; that would minimize the incentive for immediate conversion. It may also be desirable to expand existing immigration quotas to accommodate these adjustments in status, or to create a special quota for this purpose. At a minimum, the Mexican quota should be raised either permanently or temporarily to the rate of 60,000 to 70,000 a year that prevailed before the 20,000 limit was established by Congress in 1976.

Current proposals presume that, if the alien population can be legitimated, further entry can be handled through more effective law enforcement. Indeed, the amnesty program has been justified on essentially humanitarian grounds: making up for past errors. If the program is seen instead as a means of bringing an essentially irreversible process under some form of legal control, one is forced to face the distinct possibility that illegal entry will continue after amnesty.

Illegal entry will initially be limited: the secondary labor market itself is limited, and so long as sufficient legal labor is available the attraction of illegal labor is not great. Over time, however, one would expect the pool of legal labor to decline, through the return of some temporary migrants to their places of origin and through upward mobility of others. It would be desirable, then, to have some means of expanding the available labor pool. One such measure, which would introduce a safety valve in the system without creating the open-ended immigration that the public seems to fear, would he to establish a temporary work permit. The permit would go to those who, because of their status as relatives of present aliens, would eventually become eligible for permanent immigration, but who are now barred by the quota and by administrative delays from immediate entry. Over the long run, this proposal would not expand the number of people with immigration rights, but it would enable us to adjust the time at which those rights are exercised in accord with the requirements of the economy.

There are two major issues of immigration policy that are largely untouched in this article, and a brief comment on each will have to suffice. One is unemployment. It is frequently alleged that it would be possible to solve our unemployment problem were it not for the presence of large numbers of undocumented workers. But it is hard to imagine that immigrant workers are really to blame. The principal cause of U.S. unemployment is the low level at which first Ford and now Carter have chosen to run the economy. Unemployment could be eliminated through policy instruments readily available to the president and Congress. These instruments have not been used, allegedly for fear of the inflationary pressures they would generate. I believe that this fear is greatly exaggerated. In any case, none of the theories that purport to justify the fear of inflation suggests that inflationary pressures would be less under a policy that sought to expel alien workers.

A second important point concerns the fairness—or lack thereof—of the present immigration system. However the failings of the current system have been exaggerated, it is hard to exaggerate either the system's unfair and inequitable features, or how far it departs from conventional standards of justice and due process. The INS's discretion may be very good for control of the market to preserve job opportunities for Americans, but it leads to an erratic and personal manner of dispensing jobs and it penalizes those who attempt to respect the law. The proposals in this essay will not greatly improve things in this regard; in some respects they may make them worse. I am not unmindful of this nor untroubled by it.

To argue the issues involved would require a separate article. But it does seem to me that the civil rights and civil liberties issues here have consistently been fought on the wrong turf: in the battle for substantive legislative changes rather than in the battle for the budget through which substantive provisions would acquire some force. I also believe that the advocates of equity and due process have never faced up to the conflicts of values inherent in the situation. To give meaning to the philosophy expressed in the current de jure immigration system would probably require either a Berlin Wall on the Mexican border or a national identity card. It might well require both. ■

8.

Illegal Aliens: Economic Aspects and Public Policy Alternatives

WALTER A. FOGEL*

In this Article, Professor Fogel discusses the economic impact of illegal aliens in the United States. He first notes that the size and incidence of these costs and benefits vary with the economic conditions in the United States. The Article next addresses the effects of illegal immigration in conjunction with periods of low and high unemployment. Finally, the author concludes with a discussion of policies designed to reduce the flow of illegal aliens and recommends an increase in legal immigration from Mexico during periods of low unemployment.

INTRODUCTION

This Article assumes that the reader has a general familiarity with the phenomenon of illegal aliens[1] in the United States as it has existed over the last ten years[2] and focuses on two aspects of that

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* Professor of Industrial Relations, Graduate School of Management, and Research Economist, Institute of Industrial Relations, University of California, Los Angeles. B.S., North Dakota State University, 1954; M.A., University of Minnesota, 1957; Ph.D., Massachusetts Institute of Technology, 1962.

[1] I shall use the term *illegal alien* rather than *undocumented worker*, the designation preferred by some. The latter term is intentionally less pejorative than the former and, as used by some writers, implies that the Mexican-United States border is simply an artifact which has been established rather recently in the history of the area. The former term, however, more accurately conveys the fact that these aliens are violating United States immigration law.

[2] In addition to volumes 13 and 14 of the *San Diego Law Review*'s Immigration Symposia, the most important references are DOMESTIC COUNCIL COMMITTEE ON ILLEGAL ALIENS, U.S. DEP'T OF JUSTICE, PRELIMINARY REPORT (1976); W. FOGEL, ILLEGAL MEXICAN WORKERS IN THE UNITED STATES (1977); D. NORTH & M. HOUSTOUN, THE CHARACTERISTICS AND ROLE OF ILLEGAL ALIENS IN THE U.S. LABOR MARKET (1976); J. SAMORA, LOS MOJADOS: THE WETBACK STORY (1971); Rodino, *Impact of Immigration on the American Labor Market*, 27 RUTGERS L. REV. 245 (1974); Salinas, *Undocumented Mexican Alien: A Legal, Social, and Economic Analysis*, 13 HOUS. L. REV. 863 (1976). An abbreviated version of the author's book may be found in Fogel, *Illegal Alien Workers in the U.S.*, INDUS. REL., Oct., 1977.

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phenomenon: the consequences of illegal aliens, particularly those effects which take place within the labor market, and the policy for dealing with the illegal alien flow.

Five different kinds of impacts from the illegal immigration which is now occurring will be cited: sociopolitical, population, labor standards, direct social welfare costs, and market. The first four will be analyzed very briefly before I discuss what I consider to be by far the most important kinds of impacts, those which take place through labor and product markets.

SOCIOPOLITICAL IMPACTS

There has been little public discussion of the impact of current illegal immigration on the social and political life of the United States. The one exception of which I am aware suggests that illegal aliens are now forming a significant *underground* population which will not have access to the educational, political, and job market institutions of this country and which will therefore become a suppressed and alienated population containing the potential for major social protests in the latter years of this century.[3] This analysis seems more imaginative than carefully reasoned. Although the flow of illegal immigrants to the United States does carry with it the seeds of social protest, this potential unrest results simply from the addition of unskilled workers to the already superfluous ranks of unskilled workers in this country. In other words, the source of the problem is that the aliens enlarge the poverty population. The fact that the additional poor are here illegally has little to do with their potential for social protest. Earlier in this century, when more unskilled jobs were available, illegal immigrants—especially Mexicans—were assimilated into society without major disruption.

The apparent absence of concern with the social effects of illegal immigration contrasts with earlier periods of public discussion of immigration, most notably with the 1920's when some public officials expressed concern that too many Mexicans were coming into the United States.[4] In contemporary society, the absence of racial allusions does not mean that people no longer react to immigration in racist terms. Racist proclivities no doubt continue to exist. Yet, the fact that these proclivities are no longer aired publicly may mean that there has been a decline in racial prejudice in the United States. This decline may have reached the point that it is perilous rather than advantageous for participants in public debate to raise purely racial issues.

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[3] Piore, *The "New Immigration" and the Presumptions of Social Policy*, 1975 INDUS. REL. RESEARCH A. ANN. PROC. 350, 358.

[4] Higham, *American Immigration Policy in Historical Perspective*, 21 LAW & CONTEMP. PROB. 213, 222-32 (1956).

This does not mean that immigration policy will be entirely free of racial influence, for if their constituencies are racist—even if inarticulately so—legislators will find ways of knowing this and will act accordingly on specific pieces of legislation. I propose, however, to think positively on this matter and assume that there is no great concern about the social impacts of illegal immigrants which result solely from their racial characteristics.

POPULATION

The population of the United States is now growing at the rate of 1,600,000 persons per year.[5] Most of this growth results from a relative concentration of females in the childbearing ages. Birthrates have now fallen to or below the level of population replacement, so that if these rates continue, zero population change from internal sources will be achieved near the end of this century.[6] Obviously, when population in the United States is no longer growing from an excess of births over deaths, the only source of growth will be immigration. It is this fact that has prompted adherents of population control to become concerned with illegal immigration.[7]

Legal immigration, at an annual level of 400,000 persons,[8] accounts for about one-quarter of current population growth. The contribution of illegal immigration probably matches that fraction. Yet, if internal population growth ceases while the illegal flow to the United States continues or increases, the latter will account for one-half to three-quarters of future increases in population. The absolute numbers of 400,000 to 800,000 would only add 0.2% to 0.4% each year to the population of the United States. However, illegal immigration would be the major source of population growth and thus the major culprit in the eyes of those who want a constant or declining population.

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[5] U.S. BUREAU OF THE CENSUS, DEP'T OF COMMERCE, PROJECTIONS OF THE POPULATION OF THE UNITED STATES: 1975 TO 2050, at 33 (1975) (Current Population Report Series).

[6] *Id.* at 31.

[7] *See* Wirken, *Borderhoppers: Checking the Traffic in Illegal Aliens*, SKEPTIC, July/Aug., 1977, at 44.

[8] Chapman, *A Look at Illegal Immigration: Causes and Impact on the United States*, 13 SAN DIEGO L. REV. 34 (1975).

Hence, illegal immigration increases the population of the United States. The assessment of that fact clearly depends upon the valuation one gives to population control.

LABOR STANDARDS

Generally, the economic effects of legal and illegal immigration are the same, for both essentially represent an increase in labor supply. However, the illegal variety does have one unique effect: it threatens labor standards.

These standards—established by national and state legislation on worker representation, minimum wages, hours of work, social security, safety, etc.—are threatened by the availability of illegal workers because these workers must accept jobs in establishments which ignore labor laws and because they are powerless to seek enforcement of those laws. Their powerlessness is due to their illegal status. They fear that any contact with an enforcement agency is likely to result in their deportation; either the agency or their employer is likely to report them to the Immigration and Naturalization Service.

Fear of retaliation by their employer culminating in a rather short-lived job also causes illegal workers to avoid unionization. This situation exists even where major attempts to organize them have been made, as in the Los Angeles apparel industry. The absence of unionization among illegal aliens also has a significant deleterious impact on labor standards because one of the functions of a union is to see that these standards are observed.

Most illegal aliens are employed in so-called secondary labor markets which are characterized by small firms which pay low wages and provide little, if any, fringe benefits. The availability of illegal aliens makes it possible for many of these firms to ignore labor statutes. Other firms in secondary markets may attempt to comply with labor laws, but competition from firms which willingly violate the law makes compliance difficult.

Journalistic reports suggest that violations of labor standards have increased in recent years. The fact that illegal immigration has increased greatly at the same time is more than coincidental.[9] If illegal immigration is not checked, the United States will be forced to greatly increase its labor law enforcement efforts to maintain established labor standards.

SOCIAL WELFARE COSTS

Although the public at large is apparently concerned with the costs of social welfare services used by illegal aliens, most people who have studied the matter tend to agree that the direct social welfare costs of illegal aliens are slight. Several studies have found that very few illegal aliens collect unemployment compensation, go on welfare, receive foodstamps or use medicaid.[10] Some use free public hospitals and send their children to public schools, but the incremental costs involved are probably small. On the tax revenue side, it is clear that most illegal aliens do have social security and federal income taxes withheld from their pay, although a sizeable proportion apparently pays less federal income taxes than legally required.

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[9] D. NORTH & M. HOUSTOUN, *supra* note 2, at 126-37.

The very low incidence of social welfare payments to illegal aliens is not a mystery. These payments are usually made only to the unemployed, and most illegal immigrants are working. When they are not, fear of detection and deportation keeps them from applying to benefit programs. Thus, the direct social welfare costs of illegal aliens are low. But this fact ignores the indirect costs which they may produce by displacing resident workers from employment to various social welfare programs. A discussion of this displacement effect follows.

MARKET IMPACTS

The simplest and most abstract truth about immigration—legal or otherwise—is that it increases the supply of available labor and therefore makes labor cheaper, product prices lower, and employment greater. In this simple view, immigration promotes profits, economic growth, and general prosperity, with possibly excessive demands for social capital formation (schools, hospitals, housing) the only cloud on this otherwise pleasing picture.

But even this simple view, predicated on the full employment of labor resources, becomes less pleasant once the distribution of economic benefits as well as their occurrence are considered. There is no guarantee that all of the native population will participate in the benefits cited, and if they do not, there will be opposition to immigration. All native workers will benefit only if all immigrant workers enter the labor market in unskilled jobs, thereby permitting native workers to move up to higher skilled, higher paying jobs as the economy expands. When this occurs, the immigrants are said to be "complements" of the natives because they increase the latter's productivity and earnings. However, if some or all of the immigrants enter the labor market at higher skill levels, they may be "substituting" for unskilled natives who could perform higher skilled jobs if given an opportunity and, in some cases, training. Thus, the natives who are left in unskilled, low wage jobs suffer from the immigration. Without it, they would receive larger incomes, both through employment at higher skill levels and through the higher wages which would be paid for unskilled work.[11] Much of the historical immigration to the United States was complementary to native workers, enabling them to move up the job ladders of an expanding economy. Yet some of it also substituted for workers already here—especially blacks, Chicanos and rural whites.[12] It is significant that blacks did not begin to make job gains until World War I, following the cessation of European immigration to northern industrial centers.

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[10] HUMAN RESOURCES AGENCY, COUNTY OF SAN DIEGO, A STUDY OF THE SOCIOECONOMIC IMPACT OF ILLEGAL ALIENS ON THE COUNTY OF SAN DIEGO 118-43 (1977); D. NORTH & M. HOUSTOUN, *supra* note 2, 140-49.

Thus, even with full employment—and it must be considered a polar case, for it has so rarely prevailed in the United States—immigration is likely to produce costs as well as benefits. In the opposite polar case, that of high unemployment, immigration produces only costs without any offsetting benefits.

With a high unemployment rate, say ten percent of the labor force, immigrants only substitute for native workers. The latter could perform with no less efficiency the jobs which go to immigrants. Consequently, wages and prices are not lowered by immigration. In this situation, immigrants impose only costs on the economy. This economic burden is borne by the displaced native workers and by society generally to the extent that displaced native workers and their families are supported by public social welfare programs. Moreover, immigrants themselves use social services, but that is also true under full employment.

The Current Period

These polar cases of full employment and high unemployment are useful because they illustrate the two kinds of economic impacts which immigrants can have—complementary and substitution impacts. However, the fact of the matter is that both full employment and historically high unemployment have been largely absent from the American post-World War II economy. As a consequence, the effects of immigration in this period have been mixed. Economic benefits, through complementarity, have been the primary impact

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11. For an application of this theory to *guest* workers in Switzerland—primarily Italian workers—see Lutz, *Foreign Workers and Domestic Wage Levels with an Illustration from the Swiss Case*, 16 BANCA NAZIONALE DEL LAVORO Q. REV. 3 (1963). *See also* Spengler, *Some Economic Aspects of Immigration into the United States*, 21 LAW & CONTEMP. PROB. 236 (1956).

12. Reder, *The Economic Consequences of Increased Immigration*, 45 REV. ECON. & STATISTICS 221 (1963).

when resident labor[13] has been scarce. But the impact has been largely to substitute for resident labor in periods of high national unemployment.

In recent years, the period of greatest economic benefits from immigration was from 1966 to 1969, when the national unemployment rate was below four percent of the labor force. Illegal immigration began its rapid rise at that time, and the workers who arrived with this flow helped to maintain a degree of stability in wages and prices, economic growth, and profits.

The United States economic picture changed rapidly after 1969. Accompanying this economic transformation was a rise in unemployment, with an average of 8.5% of the labor force being out of work in 1975.[14] With nearly 8,000,000 people jobless, the effects of illegal immigration were—and are, for unemployment continues to be high—not nearly as sanguine as they had been in the late 1960's. One can reasonably conclude that there are major displacement effects of the current immigration because surely some of the 7,000,000 resident workers now unemployed are willing and able to substitute for employed illegal aliens.

Nevertheless, even with 7,000,000 unemployed resident workers the illegal immigrants probably still provide some economic benefits, partly because of their illegal status. The illegal entrants tend to be highly motivated people dependent on a job for their income (they are generally ineligible for social welfare programs) and who cannot count upon labor unions, law, or social sanctions to provide them with job security. Consequently, they tend to work hard to hold their jobs and are therefore generally productive, desirable employees. On the average, they are more productive at unskilled manual jobs than are the unemployed resident workers who would be willing to take these jobs at the prevailing low wage rates which they pay.[15] The high productivity of illegal aliens causes their wages and the prices of goods which they produce to be somewhat lower than they would be in the absence of these workers, even with high rates of resident worker unemployment.

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[13] I shall hereafter use the term *resident* to refer to all legal workers. It is preferable to *native* because a significant number of legal workers in the United States are foreign-born.

[14] U.S. BUREAU OF LABOR STATISTICS, DEP'T OF LABOR, MONTHLY LABOR REVIEW (June 1976).

[15] One study has found that the average hourly wages of 779 illegal aliens were $2.34 for Mexicans, $3.05 for those from other Western Hemisphere countries, and $4.08 for those from the Eastern Hemisphere. D. NORTH & M. HOUSTOUN, *supra* note 2, at 115-16 (1975 study).

Thus, the economic effects of illegal immigration over the last decade and a half have not been unequivocal. In times of full employment, the effects were principally beneficial, as reflected by lower wages and prices, higher profits, and the prolongation of economic growth. Even then, however, there were adverse impacts on the wages of resident workers who had to compete with the illegal aliens. In times of high unemployment, the economic effects of illegal aliens have been largely negative because of their substitution for resident workers. Yet, because the available unemployed resident workers tend to be less productive than illegal immigrants, the illegal aliens have to a slight degree held down wages and prices, even when unemployment has been high.

Because these impacts of illegal immigrants are mixed, difficult to discern casually, and impossible to measure, latitude exists for much public controversy about them; and this controversy has been and will continue to take place. The controversy also exists because the discussants put different valuations on the various impacts, something which they often do not make clear amidst their assertions about the nature of these impacts. The next two sections will present my own assessments of the market impacts of illegal alien workers and will state my own valuation of these impacts.

Displacements

Much of the controversy over the economic impacts of illegal aliens concerns the displacement question: Do they actually take jobs from resident workers? Many people, noticing that most illegal immigrants seem to be employed at federal or state minimum wage levels and in arduous or otherwise unattractive jobs, answer in the negative to this question because they believe that resident workers will not take these jobs. This conclusion is often correct, but it is at best a partial truth which obscures, rather than enlightens, the issue.

Resident workers are often not available for the jobs held by illegal aliens simply because of the presence of illegal immigrants. The latter group removes resident workers from these jobs in two ways. First, as stated above, because illegal aliens tend to be better workers at unskilled jobs, employers prefer them and refuse to hire resident workers.[16] This practice causes the latter to drop out of these job markets. Second, the availability of illegal immigrants causes wages for the jobs they hold to be very low and thus unattractive to qualified resident workers. Again, the resident workers drop out of the job markets.

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[16] During the bracero (Mexican contract labor) program, growers consistently preferred braceros over resident workers. *See* E. GALARZA, MERCHANTS OF LABOR (1964).

Because of these effects, employers of large numbers of illegal aliens can always accurately state that resident workers are not available for their jobs. But these employers ensure this result. The chronological process, for which farm labor is the prototype, is as follows: 1) employers offer wages which are so low that they attract principally undesirable resident workers; 2) instead of raising wages, the employers turn to illegal aliens (or braceros or some other source of nonresident labor);[17] and 3) as the illegal aliens take over the jobs, both the undesirable and qualified resident workers leave these markets—the latter because wage increases are now doomed, the former because they cannot find employment—and it becomes literally true that resident workers are not available.

Thus, the fact that resident workers are unavailable tells us only that wages are low for the kind of work performed. The more important matters are the increases in wages and resident employment which would occur if the illegal aliens were unavailable for the jobs which they now hold. In this event, if wages were to rise substantially and were accompanied with only small gains in resident employment, society, if it were guided on purely economic grounds, would probably want to keep the illegal immigrants. However, if large gains in resident employment were accompanied by only modest wage increases, most people would probably prefer the removal of the illegal aliens, or at least prevention of increases in their numbers.

Wage and Employment Impacts

The precise wage and employment changes which would take place if illegal aliens could no longer be employed in the United States are impossible to estimate. Information on these matters is so limited that even qualitative statements are hazardous. Yet, policy formulation requires some notion of the wage, price, and employment impacts of restricting or removing illegal alien workers. Therefore, as a student of this phenomenon, I feel an obligation to put forth some guesses.

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[17] For information on how California growers have historically used foreign labor, see C. MCWILLIAMS, FACTORIES IN THE FIELD (1939).

I shall assume, for this purpose, a current employment of 4,000,000 illegal aliens in the United States. This figure is well below the 8,000,000 to 12,000,000 estimate of the Immigration and Naturalization Service, but seems reasonable in view of the rate at which illegal aliens are being apprehended, now 1,000,000 per year. Hence, my guess is that if the 4,000,000 illegal aliens now employed were no longer available, employment of legal resident workers would go up by at least 2,000,000, with only modest increases taking place in wage levels in affected job markets and even smaller effects on product prices. The other 2,000,000 jobs vacated by illegal aliens would disappear through mechanization, more efficient use of labor, and the closing of some business establishments. I suspect that the number of business closures would be less than is often intimated, however, because affected employers would be remarkably effective at both finding new sources of inexpensive labor and adapting to the loss of illegal aliens in other ways.

If these estimates are correct, the wages for many jobs now filled by illegal aliens would rise from $2.65 per hour (the probable federal minimum wage in 1978)[18] to a range of $2.75 to $3.10 per hour. Employers would then be able to find resident workers to fill their somewhat reduced demand for labor. Wages and employment on the better paid jobs—jobs which illegal immigrants now hold in significant numbers—would change very little.

Assuming that these speculations are at all accurate—and I must frankly admit that they are based only on a combination of intuition and reason—what are the implications for policy? The answer to that ultimate question is not obvious, because any response depends upon a variety of values about which both reasonable and unreasonable minds disagree. I will address some of these values subsequently. However, let me at this point simply state my own value preferences within a United States domestic context, ignoring, for the moment, the effects of policy on the illegal aliens themselves.

The employment of 2,000,000 people presently out of work would, in my valuation system, be well worth some very minor increases in product prices. The rehabilitative effects on the lives of those employed would be substantial. The reduced strains on our economy and on our somewhat rebellious taxpayers for the support of people who cannot now support themselves would also be significant. Consequently, I favor a policy which severely restricts illegal immigration.

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[18] The federal minimum wage is currently $2.30 per hour for most employees. For agricultural employees, it is $2.20 per hour and will become $2.30 per hour in 1978. 29 U.S.C. § 206 (Supp. 1975). California's minimum wage is set by state law to be at least equal to the federal minimum wage. CAL. LAB. CODE § 1182 (West Supp. 1977).

It is important to note that this position is taken in the context of a United States unemployment rate of over seven percent of the labor force. When we are able to reduce unemployment to more satisfactory levels, immigration can be increased without insufferable economic impacts. But orderly increases in immigration must proceed through legal means, for the sake of the immigrants as well as our own interests.

IMMIGRATION POLICY

The Ethical Problem

The preceding analysis suggests that illegal aliens do have significant negative impacts on the United States. These impacts operate principally through the labor market, producing both a displacement of resident workers and a lowering of the relative wage where illegal aliens are employed. Labor standards for that segment of the labor force most in need of standards are also significantly affected. Population is increased by illegal immigration, although only slightly at present. If the flow of illegal aliens is ignored, however, the question of population control could become imperative as levels of illegal entry increase. Illegal aliens do not directly affect social welfare programs, but the effects of their displacement greatly increase the numbers of residents who are supported by unemployment compensation and by the various public assistance programs. Although illegal workers are also beneficial in terms of economic growth, their negative effects outweigh these benefits within my ordering of values—at least when United States unemployment rates are as high as at present and as will be in the foreseeable future.

These considerations, all internal to the United States, may settle the policy matter for many. But I believe that an examination of our external obligations, if any, is necessary before a conclusion making wide-ranging policy changes is reached. Relations at the political level between the United States and other countries—especially Mexico—may also be important, but I will leave the development of these matters to others.

International relations aside, the ethical question is largely: What is our obligation to permit people, especially poor people, to immigrate to the United States? Because the question involves ethics, the answers can be wide-ranging. Some would argue that we have no obligation to permit any immigration. They would possibly rationalize this position on the grounds that we cannot begin to accommodate everyone who would like to enter and that we have no clear basis for allocating the relatively few places which could be offered.[19] This argument is highly self-serving, but the opposite position is even less satisfactory. This latter view is completely altruistic and would require the United States to admit all immigrants as long as its quality of life exceeded that of the sending countries. Few people would support such a policy, even in a modified form.

It seems that as between these two extremes a principle can be applied. We should accommodate immigrants only to the extent that we can maintain the existing quality of life in this country—in other words, to the extent that we can keep our own house in order. This principle would place restraints on immigration, for the ability of our economic resources and our political and social institutions to successfully integrate immigrants into this society is now limited, perhaps more than it has ever been. Yet, if one is at all optimistic about the future of our society, some immigration would be permitted.

Application of this principle to the current phenomenon of illegal immigration leads me to conclude that it would not be unethical to block the flow of illegal aliens, even though most of those entering illegally are very poor. These illegal entrants are threatening the quality of life in the United States through the wage and displacement effects previously cited. Those who are most injured by these effects are the low wage workers and would-be workers of this country—in other words, the poor and near-poor.

However, I must reiterate that even in view of this conclusion, the United States can and should permit some of the external poor to enter when this nation's health improves. Hence, contrary to some public officials,[20] I believe that we have a special obligation to the poor of Mexico and that we should establish special treatment of immigration from that country.

Increased Mexican Immigration

The arguments for special treatment of Mexico are three: first, we share a 2,000 mile border with her; second, per capita incomes in Mexico are just a small fraction of those in the United States; and third, prior to United States annexation of the southwest, Mexicans were able to move freely into and out of that part of the continent. The fact that most illegal entry into the United States is from Mexico is an additional pragmatic justification for treating that country uniquely.

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[19] For a discussion which develops—but does not necessarily endorse—this point of view, see Hardin, *Living on a Lifeboat*, Bioscience, Oct., 1974, at 561.

[20] *See* House Comm. on the Judiciary, Immigration and Nationality Act Amendments of 1973, H.R. Rep. No. 461, 93d Cong., 1st Sess. 9-10 (1973).

Rather appallingly, our most recent policy move was in the opposite direction. In October, 1976, the Congress passed and the President signed an amendment to the Immigration Act which adopts the Eastern Hemisphere immigration provisions for all countries of the Western Hemisphere.[21] This decision means that an annual limit of 20,000 immigrants now applies to all Western Hemisphere countries.[22] By far, the most affected country is Mexico, whose immigration to the United States under the total Western Hemisphere numerical limitation of 120,000 has continued at an annual rate of about 45,000 in the 1970's.[23]

It is my view that there should be an *increase* in the numbers of Mexicans who are permitted to permanently immigrate to the United States. The number should vary with the level of unemployment in the United States, but when that level is low, 100,000 to 125,000 per year seems to be a reasonable number.

I oppose special treatment for Mexico in the form of a new bracero program which would make Mexican workers welcome only part of the year while they perform the lowest paid jobs in our society. Immigrants to the United States should be both permitted and encouraged to integrate fully into our society. This process requires the authorization of permanent residency.

Specific measures for raising the permanent immigration quotas from Mexico should be developed bilaterally with the Mexican government. Perhaps, in that context, population control and income distribution in Mexico, as they contribute to illegal entry into the United States, could be discussed, as well as forms of United States economic assistance to Mexico. It would be naive, however, to expect ready acceptance of our positions by the Mexican government.

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[21] Immigration & Nationality Act Amendment of 1976, Pub. L. No. 94-571, § 2, 90 Stat. 2703 (codified at Immigration & Nationality Act § 201, 8 U.S.C.A. § 1151 (West Supp. 1977)) (amending Immigration & Nationality Act § 201, 8 U.S.C. § 1151 (1970)).

[22] *Id.* § 3, 90 Stat. 2703 (codified at Immigration & Nationality Act § 202, 8 U.S.C.A. § 1152 (West Supp. 1977)) (amending Immigration & Nationality Act § 202, 8 U.S.C. § 1152 (1970)).

[23] During the 1970's, an additional 25,000 or so Mexicans have immigrated to the United States each year as close relatives of United States adult citizens. This immigration is not numerically restricted and will presumably continue under the 1976 amendment.

Increasing permissible levels of immigration from Mexico is an appropriate step to take. A side benefit may be greater acceptance by this country's Chicano population of measures designed to restrict illegal immigration.

Restricting Illegal Immigration

Under existing statutory and constitutional authority, the United States is no longer able to prevent illegal entry, nor is it able to prevent the illegal employment of those who enter legally with tourist or student visas. The only way to regain control over illegal immigration is to remove the incentive for it. This incentive is a job. The attractiveness of employment in this country easily outweighs both the risks of being apprehended for illegal entry or employment and the inconvenience of a trip home (usually at United States government expense) in the event of apprehension.

The job incentive can only be eliminated by making it unlawful for employers to hire illegal aliens, and several pieces of legislation which would achieve this have been introduced in Congress in recent years.[24] But how would such a law be enforced? Employers cannot tell by visual means which job applicants are legal and which are illegal. Nor would the requirement of a birth certificate, citizenship papers, alien registration receipt, or signed statement of legal residence ensure enforcement, because all of these documents can be falsely obtained—or given, in the case of a signed statement—without great difficulty.

Because of these enforcement problems, many Hispanics oppose employer penalties. They fear that employers, unable to confidently identify illegal applicants, would tend to discriminate against applicants who appear to be of Hispanic origin, since most illegal entrants are of Hispanic origin. Their concern, although understandable, may be unduly pessimistic. It is hard to see how employers in some industries—agricultural, apparel, food services—could discriminate against Hispanic applicants, for practically the entire work force of these industries is Hispanic. In better paying industries, qualified Hispanics, because of their long residency in the United States, would have little trouble in establishing their eligibility for employment. It may be, however, that they would encounter discrimination in industries which fall in neither of these two types.

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[24] For a discussion of these proposals, see Salinas, *The Undocumented Mexican Alien: A Legal, Social, and Economic Analysis*, 13 HOUS. L. REV. 863, 900-12 (1976).

The solution to discrimination against Hispanics and to the enforcement of a ban on hiring illegal aliens generally would seem to be the use of a work card which would establish the holder's legal eligibility for employment. Because all workers would be required to have a card, and because the possession of the card would establish work eligibility, there could be no discrimination against Hispanics who are citizens or legal resident aliens. It would be logical to adapt the existing social security card for this purpose, because almost all workers must now have one and almost all employers are required to record its number for their employee's social security account. The new social security card would have to be counterfeit-proof, nontransferable, and it could not be issued to illegal aliens. But it is feasible to achieve these requirements, even if they are somewhat costly.

Despite the logic and probable effectiveness of a work card, it is unlikely to come into being because many Americans apparently fear that it could become a kind of national passport required for identification purposes and, consequently, used to restrict civil liberties. This fear is not entirely rational because legislative prohibitions could be placed on the use of a work card for identification purposes and because there has been a fair amount of satisfactory experience with cards of this kind. For example, cards of this type are used as driver's licenses and for Selective Service purposes. Moreover, there has been a satisfactory experience in Europe with actual identification documents, if it should, somehow, ever come to that. Indeed, one of the more curious phenomena of our times is the great fear of civil repression held by many Americans despite the fact that citizens of no other country in the world would appear to enjoy as much unrestrained freedom. Be that as it may, the Carter Administration, after initially appearing to support the work card, has now backed away from it and the card is probably dead.

An alternate, less threatening approach would be to require work cards only in industries and perhaps in areas which do not self-enforce the legislative prohibition on hiring illegal aliens. Employment of illegal aliens is concentrated in a relatively small number of industries—agriculture, low-wage manufacturing and construction, and certain service sectors. The Secretary of Labor could be authorized to require work cards for all employees in industries which proved to be unable or unwilling to stop employing illegal aliens. The card would then simplify identification of illegal aliens by the Immigration and Naturalization Service and by labor-standards enforcement agencies, assuming that illegal aliens could not obtain them. Legal workers in these industries should welcome a work card as a means of preventing competition from cheap labor. All workers and employees in industries unaffected by illegal aliens would not have to bother with the cards.

Unless a provision of this type is adopted, enforcement of a prohibition on employing illegal aliens will have serious problems. Nevertheless, as a first step toward reducing illegal immigration, such a prohibition should be enacted even without enforcement certainties.

Finally, there is the question of amnesty—the legalizing of illegal entry and residence which occurred prior to some cutoff date. I propose a liberal amnesty, up to a quite recent date, in order to make the illegal alien problem prospective rather than retrospective. Few illegal immigrants who have been in the United States for any length of time are apprehended anyway, and I can see little reason to maintain a fugitive status for the illegal aliens already here in order to deport a relatively small number. This policy would also avoid the administrative burden of adjudicating the "equity" status of illegal immigrants on a case by case basis if amnesty were granted only up to an earlier date—for example, 1970. Liberal amnesty would also be well received by Hispanics and might help reduce their opposition to tighter control of illegal entry.

CONCLUSION

In summary, I must reiterate that illegal immigration is one of our more difficult national problems, involving, as it does, questions of fact, value, and feasibility. I hope that the statements of analysis, values, and policy put forward here will be of some help toward a solution.

9.

July 13, 1977 CONGRESSIONAL RECORD — HOUSE H 7061

ILLEGAL MEXICAN MIGRATION TO THE UNITED STATES: RECENT RESEARCH FINDINGS

(Ms. HOLTZMAN asked and was given permission to extend her remarks at this point in the RECORD and to include extraneous matter.)

Ms. HOLTZMAN. Mr. Speaker, Prof. Wayne A. Cornelius of the Massachusetts Institute of Technology has recently completed a most important study on the causes and consequences of illegal immigration from Mexico to the United States. The study is particularly valuable because of its reliance on empirical data, rather than on conjecture, to analyze the illegal alien problem.

Professor Cornelius provides strong factual evidence to dispute many commonly held views about the most controversial illegal immigration issues. His study indicates, for example, that many, if not the majority, of those Mexicans who migrate illegally to the United States are temporary, rather than permanent, immigrants who return to Mexico.

Importantly, Professor Cornelius also contends that the vast majority of illegal Mexican workers do not take jobs away from Americans. To bolster this contention, Cornelius cites not only his own research but also two other studies conducted in Los Angeles and San Diego in 1975–76. In both instances, efforts were made to fill jobs vacated by illegal aliens with unemployed Americans. These efforts failed.

I would note that although Professor Cornelius provides no research on job displacement in the Northeast, he is right in saying that the impact of illegals on the job market can be accurately assessed only by studying occupational patterns, job applicants and hiring practices by region, industry, and enterprise size.

Professor Cornelius notes additionally that Mexican illegals contribute far more to social security and tax revenues than they cost in social service benefits. Not only must illegals pay State and local sales taxes, but at least two-thirds of them also have social security and Federal income taxes deducted from their wages, as well as payroll taxes for unemployment and disability insurance. Conversely, less than 5 percent of the Mexican illegals studied ever collected either unemployment or welfare benefits.

Finally, Professor Cornelius also points out the critical dependence of many sectors of the Mexican economy on income from the illegal migrants.

Among the thought-provoking recommendations for U.S. policy options which Professor Cornelius suggests are a moratorium on unilateral efforts to restrict illegal immigration from Mexico, an increase in the quota for legal immigration from Mexico, institution of a new system of temporary workers migration visas, and assisting the Mexican Government in reorienting its rural development policy toward small scale, labor-incentive rural industrialization.

A lack of authoritative research material has been a major factor hindering the formulation of effective solutions to the illegal alien problem. In view of the extreme complexity of the issue and the lack of factual information which has often marred the debate on the subject, this paper merits careful consideration.

The text follows:

ILLEGAL MEXICAN MIGRATION TO THE UNITED STATES: RECENT RESEARCH FINDINGS AND POLICY IMPLICATIONS

(By Wayne A. Cornelius)

INTRODUCTION

Both in terms of the sheer number of people involved, and of the social, economic and political consequences of the phenomenon for both the sending and receiving nations, illegal Mexican migration to the U.S. should be regarded as the most critical issue currently affecting relations between the U.S. and Mexico. It is of considerably greater importance than illicit drug traffic, prisoner exchange, Colorado River salinity, and other issues which have dominated discussions between the two countries for more than a decade. Rapidly increasing pressure on both the U.S. Congress and the President from special interest groups within the U.S. to take drastic unilateral action to stem the flow of illegal workers during a period of high unemployment makes it even more imperative that the issue be accorded appropriate attention in forthcoming discussions with the Mexican government. The basic argument advanced in this paper is that a truly effective, long-term solution to this problem can be achieved only through concerted, bilateral efforts, with primary emphasis on action by the Mexican government. The argument will be supported by a review of the best available scientific evidence on the causes and consequences of illegal migration from Mexico, drawn from my own three-year study based on the migrants' communities of origin in Mexico and from other empirical studies undertaken since 1970.

What is the magnitude of illegal Mexican migration to the United States?

Estimates of the total number of illegal aliens of all nationalities present in the U.S. at this time range from 4 to 12 million. The most widely publicized estimate, provided to the Immigration and Naturalization Service (INS) by Lesko Associates, is 8.2 million illegals (in 1975), of whom 5.2 million are estimated to be Mexicans. The Lesko estimates are regarded by most experts as excessively high, by several millions, and the assumptions and methodology employed in these calculations are scientifically indefensible. Due to the clandestine nature of the population and its great geographic dispersion through the United States, it is impossible

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to estimate the size of the total illegal population with any degree of precision, using any extant source of data.

The number of illegal Mexican aliens detected in this country increased from 48,948 in 1965 to about 773,000 in 1976. Most experts believe that the INS apprehends only 1 out of 2, or 1 out of 4 illegal aliens who enter the country. While the concentration of INS enforcement activities in those portions of the country where Mexican illegals are clustered makes it impossible to estimate the true proportion of Mexicans among the country's illegal alien population from apprehension statistics (most experts believe the actual figure to be about 60 percent), it is clear that Mexico is by far the most important source country for illegal aliens. Among the rural Mexican males aged 17 and over interviewed in my study, over one-half had attempted to work in the United States on at least one occasion. Of these, 77% had gone there more than once; and half had made 4 or more trips to the U.S. in search of employment. Fifty-seven percent of those with work experience in the U.S. had entered illegally on at least one occasion.

While hundreds of thousands of Mexicans do enter the U.S. each year in search of work, the vast majority return to Mexico during the same year (usually after 4–6 months of employment). The temporary character of most Mexican wage-labor migration to the U.S. (see page 7 below) is usually overlooked by critics of the phenomenon, who view each year's "crop" of illegal migrants as an increment to the permanent-resident population of illegal aliens.[1]

Who are the illegal migrants?

The evidence on personal characteristics of illegal migrants from Mexico from all major studies is quite consistent. They are predominantly young (average age, slightly over 27 years),[2] male, poorly educated (five or fewer years of schooling), occupationally unskilled, and from impoverished rural communities. Most have worked only in agriculture prior to migration to the U.S., but many are new entrants to the wage-labor force, having only helped their fathers on the family plot prior to migration. The vast majority (about 70 percent in my study) are single when they migrate to the U.S. for the first time, but even after marriage they rarely attempt to take their wives and children with them on return trips, primarily because dependents increase the risk of detection by U.S. authorities and because of the high cost of maintaining them in the U.S.

Movement to the U.S. from those regions of Mexico which have traditionally supplied the largest share of illegal migrants is by now a highly institutionalized phenomenon—indeed, a family and local community tradition in many cases. In my study I found that half of those who had migrated to the U.S. illegally also had fathers who had worked in the U.S., many of them during the period of the "bracero" program of contract labor (1942–1964). Three-quarters of the illegals also had brothers or sisters who had worked in the United States. Moreover, 43 percent of the married men who had worked in the U.S. also had one or more children who had gone to the U.S. Landless agricultural workers and sharecroppers are by far the most migration-prone groups, although some small private landowners and ejidatarios (recipients of small plots of land under Mexico's agrarian reform program) also find it necessary to supplement their income through employment in the U.S.

There is also some evidence from my study indicating that illegal migrants to the U.S. differ from Mexicans who have never gone to the U.S., in terms of certain psychological and attitudinal traits. For example, the illegals have a somewhat higher propensity to take risks; they are more sensitive to inequalities in the distribution of wealth within their home community; and they have weaker attachments to the Catholic Church and Catholic religious symbols.

Why do they go?

All studies stress the strongly economic motivation of Mexican illegals. More than 84 percent of the migrants interviewed in North's (1976) study, Villalpando's (1977) study, and my own said they had gone to the U.S. to find a job or to increase their family income. It is clear, however, that the huge wage differentials (often three to four times, for comparable work) between the U.S. and Mexico are more important than outright unemployment in Mexico in promoting migration to the U.S. Of the "illegals" interviewed in my study 77 percent cited the need to increase their earnings as their principal reason for migrating to the U.S.; only 9 percent mentioned lack of work in their community of origin. And when asked why they had gone to the U.S. rather than to some city in Mexico, most migrants (67 percent) gave higher wages in the U.S. as their reason.[3] The attraction of higher wage scales in the U.S. is even more powerful among Mexican rural dwellers who have not yet had a work experience in the United States. Among my interviewees who had not yet migrated to the U.S., nearly half expressed a desire to do so at some point in the future, 92 percent of them citing better wages in the U.S. as their principal reason. Other research has also demonstrated that the size of the "gap" between Mexican and U.S. wages is the single best predictor of the volume of illegal Mexican migration over time (Jenkins, 1976).

The importance of unemployment and underemployment in Mexico—currently running at 30 percent or more in the rural sector—should not be underestimated; however, the findings indicate that it is not just the lack of jobs, but of reasonably well-paid jobs, which fuels migration to the U.S. Enforcement of official minimum wage levels is extremely lax in Mexico, and since 1971 the real incomes of poor Mexican families have been seriously eroded by a sharply increased rate of inflation. Another inflationary spiral has resulted from the nearly 100 percent currency devaluation in Mexico during 1976. Wholesale prices rose by 45 percent from January, 1976 to January, 1977, and the inflation rate may exceed 30 percent during 1977. With U.S. dollars now yielding twice as much in Mexico, the devaluation can be expected to produce a substantial increase in illegal migration to the U.S. This increase should be noticeable during the first half of 1977. Since most illegal workers return to the U.S. each year during the February–April period.[4]

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[1] Typical of this view is the recent statement which claimed that "8 to 10 million illegals are already here, and we are getting *an additional 500,000 to 600,000 each year*" ("Meet the Press," NBC Television broadcast; emphasis added).

[2] Among those included in my study, the average age upon *initial* migration to the U.S. was 23 years.

Historically, severe drought, floodings, or other climatic conditions which affect agriculture have resulted in sharp increases in the rate of migration[5] to the U.S. Another major problem in recent years has been the high cost of unavailability of chemical fertilizers in Mexico, needed even by subsistence farmers to grow crops in their depleted soils. The general point to be made is that the flow of illegal migrants from Mexico seems to respond far more to economic conditions within Mexico than to conditions in the U.S., including the U.S. level of unemployment and the level of apprehension effort by the INS. The massive upsurge in illegal migration to the U.S. in recent years has coincided with Mexico's most serious economic crisis since the late 1930's.

Mexico's poor are aware of the increasing difficulty of finding employment in the U.S. given the current state of the economy and the saturation of some labor markets by illegal aliens. Among those rural dwellers interviewed in my study who had had no work experience in the U.S., 56 percent believed that it would be difficult for them to find the kind of job they would like to have in the U.S. They are also aware of the considerable expense involved in making the trip and the danger of apprehension by the INS. Even under such circumstances, however, a decision to go to the U.S. is often eminently rational. The peasant usually estimates that the risk of not finding a job, or of being caught and expelled by the INS, is substantially lower than the risk of being unemployed or having an adequate income if he remains is his home community. Among the illegal migrants interviewed in my study, 63 percent had found a job in 10 days or less after crossing the border, during their first trip to the U.S. During their most recent trip, 63 percent found work within 10 days, and an additional 9 percent had jobs assured even before they left Mexico (they simply returned to the same employer who had employed them during previous sojourns in the U.S.). The illegals' relative lack of difficulty in finding jobs in the U.S. is clearly reflected in their perceptions of employment opportunities in Mexico and the U.S.: when asked to rate nine possible destinations—including Mexico City, Guadalajara, four additional Mexican localities, California, Chicago, and Texas—in terms of the rapidity with which a migrant to each place could obtain work, 58 percent of the illegals in my study specified one of the U.S. destinations as the place where a job might be obtained most rapidly. (Their responses do not simply reflect unfamiliarity with Mexican destinations—one-third of the illegals had also had one or more work experiences in Mexico outside their home community.)

An excess of population—relative to the amount of cultivable land and the number of non-agricultural employment opportunities—is one of the most basic factors promoting migration to the United States, as well as to urban areas within Mexico. Mortality rates have fallen sharply in Mexico since 1940, due to improved health care, sanitation, and nutrition; fertility rates remain quite high (the completed family in rural communities often has 8 or more surviving children). The Mexican government claims to have reduced the country's rate of natural population increase from 3.6 percent (one of the highest rates in the world) to 3.2 percent in recent years, but these statistics undoubtedly overstate the actual reduction due to data collection problems in rural areas.

In fact, birth control information and services remain conspicuously unavailable in most rural communities, since the Mexican government's family planning program has been heavily concentrated in urban centers. It must be emphasized, however, that even if population growth were somehow to be brought into equilibrium with employment opportunities, illegal migration to the U.S. would undoubtedly continue, as long as the wage differential for unskilled or low-skilled jobs between the U.S. and rural Mexico remains as large as it is today. Most rural dwellers can earn and save more in 1–3 months of work in the U.S. than they could in an entire year of labor in their home community.

How do they gain entrance?

The vast majority of Mexicans migrating illegally to the U.S. in recent years have entered "without inspection," swimming the Rio Grande along the Texas-Mexico border (59 percent in my study), vaulting the wire fences in California (27 percent), or crossing on foot through the deserts of New Mexico and Arizona (7 percent). Less than 5 percent have been "visa abusers," i.e., those who secure tourist visas and overstay them in order to work in the U.S. On their first trip to the U.S. 36 percent of the illegal migrants interviewed in my study made use of "coyotes"—professional smugglers of alien workers—to effect entry; 41 percent found it necessary to use coyotes during the most recent trip, most of them paying between $150–$225 (U.S.) for their services. The dependence of so many Mexican migrants on commercial smuggling operations for assistance in entering the U.S. is one of the most unfortunate consequences of the current U.S. immigration policy.

It is noteworthy that a substantial proportion of older illegal migrants (27 percent in my study) made their initial trip to the U.S. as "braceros" during the 1942–1964 period. When the "bracero" agreement with Mexico was terminated unilaterally by the U.S. Congress (under heavy pressure from organized labor), these migrants continued

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[3] Another study of 919 apprehended Mexican illegals found that one-third of the illegals originating in the seven Mexican states which provide the majority of migrants to the U.S. had jobs in their home community at the time of their departure for the U.S. (see Bustamante, 1976).

[4] For example, the El Centro, Calif., border patrol station reported 2,250 apprehensions during the month of February, 1977, as compared with 1,582 in February, 1976—a 42 percent increase. (New York Times, Feb. 28, 1977, p. A10)

to go to the U.S., illegally. In this sense, the "bracero" program never really ended; it simply went underground.

About 30 percent of my respondents who had entered the U.S. illegally on at least one occasion had never been apprehended by the INS (despite the fact that 70 percent of them had made multiple entries over the years); and another 30 percent had been caught only once. Of those who had been apprehended on any occasion, 47 percent had been caught only during their first or second trip. The data show that the probability of apprehension decreases substantially with each successive illegal entry, presumably because the migrants learn successful evasion techniques. The interviews make it clear that the INS is not a very formidabel adversary, nor an effective deterrent to illegal migration. Even among those illegals who are caught and "voluntarily" returned to Mexico, a substantial proportion (36 percent in my study) attempt re-entry within a few days, and more often than not they are successful.

Where do they go?

All studies show that the most favored destinations for illegal Mexican migrants to the U.S. are in California (especially the southern part of the state), the Chicago area, and the state of Texas, in that order. For those migrating without enough resources to support themselves during a prolonged period of job-seeking, California offers the best possibilities, because agricultural jobs are plentiful there, and are less time-consuming to obtain. Texas is least favored because of the low wage scales prevailing there. The Chicago area, offering higher-paid jobs in both industrial and agricultural enterprises, is preferred by those having sufficient time, money, and personal contracts to facilitate job-seeking. The poorest migrants often prefer jobs located in small towns or rural areas, because of the lower living costs there. Illegals from just one of the rural communities included in my study were working in at least 110 different U.S. localities dispersed through 19 states in 1975; most of these localities were outside major cities. The long-term trend, however, is toward greater migration to large urban centers.

Are the illegals temporary or permanent immigrants?

The answer to this question is crucial, since many of the social and economic costs to U.S. society usually attributed to illegal migration are likely to develop only if the migration is of a permanent rather than temporary character. Most discussions of the illegal alien problem, including the recently released report of the Domestic Council Committee on Illegal Aliens (1976), employ a "stage" model derived mainly from U.S. experience with European immigrants. According to this model, the initial wave of migrants are young and single, and return to the home country after relatively short periods of employment in the U.S.; however, the next wave brings wives from the home country or marries in the U.S. Children of immigrants in this second wave are born in the U.S., and a "second generation" of exploited, disenfranchised and alienated workers emerges. While this pattern may be followed by illegals from other sending countries, there is little evidence indicating that it applies to Mexican illegals.

One major study found that 55 percent of apprehended Mexican illegals had been in the U.S. less than one year, and the average duration for Mexicans was shorter than that of illegals of other nationalities (North, 1976). Among the illegals in my study 71 percent had remained in the U.S. for 4 months or less during their initial trip. Fifty-four percent had stayed for 4 months or less during their most recent work experience in the U.S.; only 11 percent had worked in the U.S. for more than 1 year before returning to Mexico. Historical research shows that Mexicans who migrated to the U.S. during the pre-1930 period were more likely to spend long periods of time (several consecutive years) working there than present-day migrants.

Many, if not the majority, of these Mexicans who migrate illegally to the U.S. have never seriously considered the possibility of moving there permanently. Most simply return to Mexico when their seasonal jobs are ended (30 percent in my study), or when their separation from relatives in Mexico becomes intolerable (32 percent of my respondents). When illegals interviewed in my study were asked, "If you could get [legal entry] papers, would you like to live permanently in the U.S., or would you prefer to continue living here and working there from time to time?," 74 percent reported that they preferred the latter arrangement. When asked for how long they would prefer to work in the U.S. more than 70 percent said 6 months or less per year. Among the illegals interviewed in Villalpando's (1977) study, only 39 percent stated that they would prefer to live in the U.S. if given a choice.

Of course, substantial numbers of Mexican illegals do manage to take up more-or-less permanent residence in the U.S., either by concealing themselves in heavily Mexican-Chicano neighborhoods or by eventually legalizing their status. But they are outnumbered—probably by a margin of at least 10 to 1—by illegals who prefer to maintain a pattern of seasonal or "shuttle" migration. Nearly three-quarters of the illegals in my study resumed their normal occupation in their home community upon returning from their most recent trip to the U.S.

Do Mexican illegals take jobs away from native Americans?

All experts agree that the principal impact of Mexican and other illegal aliens within the U.S. is experienced in the labor market. There is considerable disagreement, however, about the nature of this impact. Most of the concern about the influx of illegal workers from Mexico among the U.S. labor union leaders stems from the fact that illegals tend to be concentrated in the low-wage, low-skill sector of the labor market—where they presumably "compete directly with" or "displace" disadvantaged native Americans, especially blacks and Chicanos. They reason that since illegal aliens are present in the U.S. in large numbers, and since unemployment rates in the U.S. (especially among the young and minorities) are high, there must be a casual relationship between the two.

There is, however, no direct evidence of displacement of native Americans by illegal Mexican workers, at least in those sectors of the job market where the Mexicans typically seek employment. The principal impact of illegal migration may be to depress wage scales—or maintain the status quo—for certain types of unskilled jobs, rather than to displace native Americans from them. Workers cannot be displaced if they are not there, and there is no evidence that disadvantaged native Americans have ever held, at least in recent decades, a significant proportion of the kinds of jobs for which illegals are usually hired, especially in the agricultural sector. (The major exception would be the employment of poor blacks on plantations in the Deep South—a region in which relatively few Mexican illegals have been employed in recent years.)

Most of the jobs in question are the least desirable in the U.S. labor market: they involve dirty, physically punishing tasks, low wages, long hours, generally poor working conditions, low job security (often due to the temporary or seasonal character of the work), and little chance for advancement. Such jobs were held by impoverished European immigrants in the late 19th and early 20th centuries. The Europeans were replaced by black migrants from the U.S. South in the 1920's and 1930's. Since the 1940's or early 1950's, Mexican workers have been the principal labor supply for these jobs. The experience of West European countries—particularly France and Germany—in recent years demonstrates that they, too, have found it necessary to import millions of unskilled immigrants from underdeveloped nations to fill the low-status jobs in their societies which are increasingly shunned by upwardly mobile natives.

Concerned labor leaders point to the fact that Mexican illegals are increasingly employed not only in agricultural stoop labor but in more "desirable" industrial, construction, and service jobs. The available data do indicate a trend in this direction, but it is gradual. In the North (1976) study, 58 percent of Mexican illegals were employed in unskilled agricultural work or menial service occupations; 16 percent skilled blue-collar jobs. Among the illegals interviewed in my study, 69 percent had worked as unskilled agricultural laborers during their first trip to the U.S.; 43 percent had been so employed during their most recent trip. Of the remainder, only 7 percent had held skilled jobs in industry, construction, or services during their most recent stay in the United States. Among recent illegal migrants, the most frequently held jobs were (in order of importance) agricultural field laborer, dishwasher or waiter in a restaurant, and unskilled construction worker. Another recent study (Villalpando, 1977) of 217 illegals apprehended on the West Coast in July 1976 found that 57 percent of the employed aliens were working in agriculture at the time of apprehension; 18 percent in industry; 17 percent in services; 3 percent in construction; and 5 percent in other sectors (the study provides no data on skill levels).

Even in the urban sector, there is as yet no hard evidence to support the thesis of massive job displacement. One intensive study of Mexican illegals' participation in the labor market of the San Antonio metropolitan area found that "Mexican illegal aliens in no way compete with or displace workers in the primary [skilled] labor market. In the secondary labor market, where they work alongside blacks and Chicanos, illegals usually represent an additional supply of labor . . . Blacks and Mexican-Americans worked in similar industries but in basically different jobs. . . . For example, in a typical small construction firm, the Mexican illegal aliens worked as laborers while the Mexican-Americans and blacks had jobs as craftsmen. In a manufacturing industry such as meatpacking, the illegals worked in occupations that Mexican-American and blacks shunned because of dirty working conditions" (Cárdenas, 1976).

The "job displacement" hypothesis is called into question particularly by the failure of two different programs carried out in Los Angeles and San Diego during the 1975-1976 period, programs explicitly designed to fill jobs vacated by apprehended illegal aliens with U.S. citizens. As described in the Villalpando study (1977), the Los Angeles program consisted of an attempt by the State Human Resources Development Agency to fill some 2,154 jobs vacated by the apprehension of illegal aliens. The Agency's efforts to recruit citizen residents of the Los Angeles area to fill these jobs reportedly failed because (1) most of the employers paid less than the minimum wage rate; (2) the low-status job categories did not appeal to local residents; and (3) applicants were discouraged by the difficulty of some jobs and the long hours demanded by the employers.

The "Employer Cooperation Program" conducted by the I.N.S. in San Diego from November, 1975 to April, 1976, had a similar outcome. As described by Villalpando, the purpose of this program was "to assist employers to identify illegal aliens on the job, remove them from the payroll, and fill the job slots with local unemployed residents." A total of 340 illegal aliens were identified and removed from their jobs during the six-month program, most of whom had been working in hotel maintenance, food handling and processing, and laundry services, earning wages ranging from $1.75 to $7.06 per hour. The 340 jobs were eventually filled, but not by unemployed citizens of San Diego. "Instead, 90 percent of the positions were occupied by [legally entering] 'commuter workers' from Baja California, Mexico" (Villalpando, 1977: 62).

Such results are extremely important; they indicate that an accurate assessment of the impact of Mexican illegals on the U.S. job market can only be made through intensive studies of occupational patterns, job applicants and hiring practices within specific regions, industries, and sizes of enterprises. This last category seems especially important, since numerous researchers have noted that Mexican illegals working in urban areas are typically employed in small, marginal firms (e.g., plants manufacturing clothes or shoes, firms processing agricultural products, restaurants and hotels, etc.) which have long been dependent upon Mexican illegals for their supply of unskilled labor and whose very survival might be jeopardized by a sharp reduction or elimination of the supply of illegal workers.[8] The jobs themselves might be eliminated through mechanization if labor costs were to rise sharply, and the U.S. consumer prices of products currently produced with alien labor would almost certainly rise, particularly food products.

Findings like those cited above also call attention to the fact that some types of jobs—by the very nature of the work they involve—probably could not be "upgraded" (either by raising wages or improving working conditions) to the extent necessary to attract native American workers. This applies particularly to stoop labor in the agricultural sector, but also to many types of unskilled jobs in services and industry. Welfare and unemployment compensation are undoubtedly attractive alternatives to taking such jobs, for many disadvantaged native Americans.[*] In short, the frequently repeated claim of INS Commissioner Chapman that with more enforcement resources he could "liberate" more than a million alien-held jobs which would promptly be taken by native Americans is based more on wishful thinking than on scientific evidence. The case for a more restrictive immigration policy cannot be made on the unqualified grounds that "illegals take jobs away from native Americans," at least on the basis of information currently available.

The current upsurge of illegal migration from Mexico, largely in response to devaluation and high inflation within Mexico, will not translate automatically into higher unemploymet among disadvantaged native Americans. Its most probable effect will be to increase the competition among illegal Mexican migrants—and between illegals and Mexican nationals who enter the U.S. with legal entry papers—for the same pool of jobs which traditionally have been filled by migrant labor.

Do Mexican illegals take more from the U.S. in social services than they contribute in taxes?

There is uniform agreement among researchers that Mexican illegals make amazingly little use of social welfare services while present in the U.S., and that the cost of the services they do use is far outweighed by their contributions to Social Security and tax revenues. Illegal aliens must, of course, pay state and local sales taxes. Moreover, at least two-thirds of them also have Social Security and federal income taxes deducted from their wages, as well as payroll taxes for unemployment and disability insurance (North, 1976; Villalpando, 1977; Cornelius, 1977). At the same time, only about 4 percent of the Mexican illegals interviewed in the North, Bustamante, and Cornelius stuides had ever collected unemployment benefits; fewer than 4 percent had ever received welfare benefits; only 3 percent or fewer had ever had children in U.S. public schools; and only 6-10 percent had ever received free medical assistance in a U.S. hospital or clinic. Villalpando (1977) found that there were only 193 illegal aliens on welfare aid in San Diego County in May, 1976, and that the number had decreased to 23 by January, 1977 (.0002 percent of a total estimated illegal alien population of 92,138).

The Villalpando study provides the first comprehensive analysis of the burden placed by illegal aliens on tax-supported social services in a specific area of the U.S. It estimates that the social services (education, health care, aid to families with dependent children, general relief, food stamps, children's services, burial services, etc.) consumed by illegal aliens cost approximately $2 million per year; however, the study also calculates that illegal aliens contribute about $48.8 million in taxes on wages earned locally each year. It should be noted that the San Diego case provides an "acid test" of the hypothesis that Mexican illegals place a heavy burden on public services which is not offset by their contributions to tax revenues: the county receives a massive flow of illegal aliens from Mexico; in 1975 it accounted for 43 percent of the total apprehensions of illegal aliens along the southern U.S. border and 35 percent of all apprehensions throughout the nation.

Nevertheless, the INS, several members of the U.S. Congress, and the mass media continue to publicize an estimate made by the Innes City Fund, a Washington-based consulting firm, that consumption of social services by illegal alies costs the U.S. taxpayer more than $13 billion per year (which is, presumably, not offset by aliens' tax contributions). This estimate is not based on any original field research, and was apparently arrived at by applying highly questionable assumptions about rates of service utilization to the already discredited Lesko Associates estimate of the number of illegal aliens present in the country.

Do Mexican illegals differ from illegals of other nationalities?

The principal study including illegal aliens from all major source countries (North, 1976) demonstrates that the illegal population is far from monolithic, and that striking differences exist between Mexican illegals and those from other Western and Eastern hemisphere nations. By comparison with the latter groups, Mexican illegals are:

far less likely to speak any English;

have less formal education;

bring fewer occupational skills from the home country;

earn substantially lower wages from U.S. employers;

are more likely to be employed in unskilled jobs in agriculture and services;

make less use of social services;

remain in the U.S. for shorter periods of time.

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[*] Of the illegals interviewed in my study, 54 percent had been employed in firms employing fewer than 25 persons, according to the respondents. 53 percent of the illegals also reported that nearly all of their co-workers in these establishments had been Mexicans.

[*] For example, Villalpando's (1977) study of illegal aliens in San Diego County found that the majority of them were working for "far below poverty-level wages." Villalpando and his associates estimate that the average annual income of the illegal alien who is employed for a full twelve months (not the typical situation) is $4,368. By contrast, a welfare recipient for a family of five would receive approximately $4,800 per year. The study concludes: "It is unlikely that persons eligible for welfare benefits would work for the wages that the majority of illegal aliens receive, when the applicant can receive as much or more [in] annual welfare payments, . . . particularly since welfare payments are not considered taxable income."

Studies of illegal aliens from other Western hemisphere countries (Cr[illegible], 1976; Chaney, 1976; Dominguez, 1975) also suggest that these groups are far more likely than Mexicans to become permanent residents of the U.S.

The findings of these studies indicate that Mexican illegals are severely disadvantaged in competition with both native Americans and immigrants from other countries for higher-status jobs requiring English language competence, formal education, and specialized job skills. The data also show that the presence of Mexican illegals in this country places less of a burden on social services in the short run and poses less danger of long-term social and economic costs resulting from permanent settlement than the presence of illegals from other principal source countries. All this indicates the need for a U.S. immigration policy which is sensitive to the particular characteristics and consequences of illegal migration from Mexico.

Are Mexican illegals exploited in the U.S.?

Mexican illegals are usually paid low wages, by U.S. standards. In the North (1976) study, the average wage received by Mexican illegals was $2.33 per hour; in the Villalpando (1977) study, the average wage was $2.36 per hour. Those interviewed in my study had earned an average of $2.42 per hour during their most recent trip to the U.S. A significant minority of the illegals in all three studies had been "exploited" by U.S. employers, in the sense that they were paid less than the legal minimum wage (though usually not less than similarly employed legal workers). It is doubtful, however, that even these underpaid illegals considered themselves to have been exploited while working in the U.S.; in the rural Mexican communities included in my study, the wages typically paid to landless workers averaged between 25 and 30 pesos per day (U.S. $2.00–$2.40, at the former exchange rate). While Mexican officials have been quite vocal in criticizing the exploitation of Mexican workers in the U.S. as a source of cheap labor, they usually fail to note that by going to the U.S. the landless peasant is escaping considerably more severe exploitation at the hands of wealthy landowners in his home community, who pay starvation wages for even longer hours of labor, under even poorer conditions, than most low-status jobs to be had in the U.S.

What is the impact of illegal Mexican migration to the U.S. on the Mexican Economy?

Mexican illegals typically remit a substantial portion of their U.S. earnings to relatives in Mexico (30 percent of monthly U.S. earnings in the North, 1976, study; 37 percent in the Villalpando, 1977, study; 49 percent in my study). Among the illegals in my study, 81 percent reported that they sent money regularly (usually by money order or check) during their most recent work experience in the U.S. They remitted an average of $162 (U.S.) per month (in the North study, the average monthly remittance was $129; in the Villalpando study, $138 per month). For nearly three-quarters of the migrants' families represented in my study, these remittances were their sole source of income while the family head was working in the U.S. The illegals in my study were supporting an average of 6.1 dependents in Mexico during their most recent stay in the U.S.

Apart from the money which is remitted periodically by migrants while they are working in the U.S., most (64 percent in my study) are able to save and bring money back with them: the average was $458 among my interviewees, brought back after their most recent trip to the U.S. The total amount involved, in periodic remittances as well as savings returned to Mexico, is quite large—probably in excess of $3 billion per year. It is a crucial (if generally unacknowledged) factor in the Mexican balance of payments, considerably more important than income from tourism. While migrant remittances clearly represent a negative factor in the U.S. balance of payments, it must also be recognized that 60–70 percent of the illegals' earnings typically remain in the U.S., contributing both to tax revenues and to retail sales. The study of the economic impact of illegal aliens (99 percent of them Mexicans) in the county of San Diego conducted by Villalpando (1977) estimates that 44 percent of the illegals' wages, or more than $115 million dollars per year, are spent locally by the illegals for goods and services.

At the level of the local community in Mexico, the impact of migrants' earnings is difficult to overestimate. Income from U.S. employment is crucial to the maintenance of the migrants' families; virtually all of the money remitted to relatives while the migrant is away is used for family maintenance. Among the illegals interviewed in my study, 43 percent also used the lump sums brought back from the U.S. for family maintenance; another 13 percent used the money mainly to pay previously accumulated debts; and 8 percent invested most of their earnings in capital goods (land, livestock, small businesses). Only 18 percent of the migrants spent most of the money brought back from the U.S. on non-essential consumer goods or recreation. In all of the sending communities studied in Mexico, local commerce has benefited substantially from migrant remittances.

What would be the consequences of a sharp reduction of illegal migration for Mexico?

Given the heavy dependence of thousands of rural Mexican communities upon income from the U.S. over a period of several decades, the economic consequences of a severe reduction or cut-off of the flow of remittances from the U.S. would be catastrophic for many of these communities. In some regions, the short-term effect of such a cut-off or reduction would probably be a sharp increase in the incidence of land invasions by peasants; and throughout rural Mexico a step-level increase in permanent out-migration to large Mexican cities could be expected. Such out-migration has been heavy since the 1940's, but the rate is substantially lower than it would have been, in the absence of temporary migration to the United States. Most internal migrants have settled in Mexico City, which is now (with about 13 million inhabitants) the third largest metropolitan area in the world, after Shanghai and Tokyo. A very large and steadily increasing share of Mexican government revenues is being devoted to providing urban services and infrastructure for the inhabitants of Mexico City and two other large metropolitan centers, and the already exorbitant societal costs of these urban agglomerations would be raised substantially by a new influx of migrants from the countryside. To the extent that these costs reduce the share of resources which can be allocated to rural development, they will only contribute to further rural-to-urban migration and persistent attempts to migrate illegally to the U.S. The social and political tensions which would be generated within Mexico by a sharp reduction in migration to the U.S. are difficult to estimate, but the fact that such migration has served as an important stabilizing force in the past cannot be ignored.

What is the Mexican Government's position on illegal aliens?

In dealing with this issue, the Mexican Government must balance a number of important and conflicting interests. Illegal migration to the U.S. clearly functions as a political and economic safety valve for Mexico, as President López Portillo himself recently admitted (interview in the New York Times, February 1, 1977). Migrant remittances—which López Portillo did not mention—are also a very important offset to unfavorable trade balances with the U.S. At the same time, the large volume of illegal migrants crossing the border calls attention to the failure of Mexico's development policies to create sufficient employment opportunities and to raise income levels among a very large sector of the rural population. In this sense the illegal migration is an acutely embarrassing phenomenon for the Mexican Government. The issue also has strong nationalistic overtones within Mexico, exacerbated by isolated but widely publicised cases of physical mistreatment of Mexican illegals by U.S. authorities and others, and by the general awareness that historically the U.S. has chosen to recruit Mexican labor in times of national emergency (World War II, the Korean War) while officially shunning it in times of normalcy.

Most recent Mexican administrations have been content to ignore the issue as much as possible, limiting their diplomatic initiatives to calls for greater protection of the rights of illegal aliens while they are in the U.S. and to periodic efforts to secure a new contract-labor agreement (along the lines of the earlier "bracero" pact) between the two countries. Former President Luis Echeverria often complained loudly about mistreatment of illegal (or as the Mexican government prefers to call them, "undocumented") workers, blaming the migration on widening inequalities between rich and poor nations in the international economic system, and using it as a further justification of his plan for a "new international economic order." In 1974 he rejected the idea of a new "bracero" agreement, on the grounds that it would only increase the exploitation of Mexican workers in the U.S.

President López Portillo is likely to take a more pragmatic, non-ideological approach to this and other related issues in discussions with United States officials. His initial message, however, will be virtually identical to that of his predecessor: "We want to export commodities, not people." He has already announced that new trade concessions (i.e., lowering U.S. tariffs on Mexican-made shoes and agricultural products) are at the top of his negotiating agenda with the U.S. Government, arguing that the best means of reducing the flow of illegal migrants is for the United States to "take steps to assist the Mexican economy (through trade measures, for example) . . . and thereby reduce the pressure on poverty-striken Mexicans to immigrate" (New York Times, February 1, 1977). He has also announced, significantly, that his top domestic policy priority is to increase food and energy production.

RECOMMENDATIONS FOR U.S. POLICY

(1) Moratorium on New Unilateral Efforts to Restrict Illegal Immigration. On several occasions in the past (e.g., the 1929–30 "Repatriation" campaign; "Operation Wetback" in 1953–54), the U.S. Government has demonstrated its capacity to effect mass deportation of illegal Mexican aliens through military-style operations. (It should be noted, however, that both of the above-mentioned operations created a major crisis in our foreign relations with Mexico, and violated the civil and legal rights of hundreds if not thousands of Mexican-American citizens and Mexican nationals legally residing in this country.) And while the technological feasibility of "sealing" our 1800-mile border with Mexico is questionable, there is little doubt that significant increasing the resources available to the INS for apprehension activities would at least shorten the job tenure of many illegals who enter the country.

Similarly, federal legislation (along the lines of laws passed recently by the states of Massachusetts, California, Connecticut, Kansas and New Hampshire) to impose criminal penalties and fines of up to $500 on U.S. employers who knowingly hire illegal aliens might deter some illegal immigration, by reducing the primary incentive for coming to the U.S.—relatively well-paid (by Mexican standards) jobs. However, my interviews—both formal and informal—with hundreds of Mexicans who have worked illegally in the U.S. suggest that the deterrent effect of any law to criminalize the hiring process on the behavior of the migrants themselves is likely to be minimal. This applies particularly to those "experienced" Mexicans who already succeeded in illegally entering the U.S. and finding employment on one or more occasions. A truly massive, ubiquitous, and extremely costly enforcement mechanism would have to be provided to successfully implement any such law; in the absence of such a mechanism, enforcement is likely to be quite uneven, and the impoverished Mexican peasant will assume that the risk of his being denied employment in the U.S. will still be considerably less than the risk of being unemployed or of having an inadequate income in his home community. The operation of this "lottery effect" also ensures that the deterrent effect of technological innovations such as more (or better) electronic sensing devices along the border and a universal system of "counterfeit-proof" identification cards for legal residents of the U.S. will be minimal.

In the long run, all such unilateral police actions or restrictive measures are doomed to failure, since they treat only the symptoms of the "disease" and not the disease itself. It is impossible to legislate away the tremendous migratory pressures at the U.S.-Mexican border, which result from the huge wage differentials between the U.S. and Mexico, rapid population growth, high unemployment and maldistribution of wealth within Mexico, and the perception of the United States by large sectors of the Mexican poor as a land of relatively accessible economic opportunities. The pressures are so intense, and likely to remain so in the foreseeable future, that most Mexican illegals are not likely to be deterred, even by the most draconian restrictive measures. The essence of the problem, and the futility of dealing with it merely through police actions, was conveyed most succinctly and eloquently by one of my subjects, who had been apprehended by the INS for the third time. Confronted by an INS agent, he was asked: "What can we do to prevent you from doing this again?" The illegal responded: "Shoot me!"

(2) Increase the quote for legal immigration from Mexico. The "Immigration and Nationality Act Amendments of 1976" (H.R. 14535), passed in the final minutes of the last Congress and subsequently signed by President Ford, had the effect of reducing legal immigration from Mexico from about 62,000 to 40,000 per year. It will increase the waiting period for Mexican applicants for immigrant status (already about two one-half years), while shortening the wait for people from elsewhere in the Western hemisphere. This and any similar measure will be counter-productive in reducing illegal migration from Mexico, since all historical evidence shows clearly that greater obstacles to legal immigration simply shift the movement toward illegal channels. As noted above, the restriction of legal entry opportunities brought about by termination of the "bracero" program in 1964 led to a sharp increase in illegal migration from Mexico. The quota for legal Mexican immigration should be raised at least to its pre-October, 1976, level.

(3) Institute a New System of Temporary Worker Migration Visas. Such a system would involve issuing, through U.S. Consulates in Mexico, a predetermined number of temporary worker visas permitting up to 6 months (not necessarily consecutive) of employment in the U.S. each year. To maintain a valid visa, the worker would be required to leave the U.S. for at least six months a year. The date of each return to Mexico would be stamped on the visa by U.S. immigration authorities at the border. Mexican workers acquiring a temporary worker visa would be told at the time the visa was issued that if they ever violate the time restrictions on employment in the U.S., they will never be able to obtain another visa. Those who do overstay their visas would be placed on a list of visa abusers to be maintained at all U.S. consular offices in Mexico.

Visas would be issued by U.S. Consulates on a first-come, first-served basis, up to the predetermined monthly quota. No pre-arranged contract between the Mexican worker and a U.S. employer would be required to obtain a visa. No geographical constraint would be imposed on the movements of the visa holder within the U.S.; nor would there be any restrictions on the type of enterprise in which he can seek employment. The number of visas issued should be adjusted on a monthly and yearly basis, to reflect fluctuations in the U.S. demand for alien labor and the rate of unemployment and underemployment within Mexico. The Department of Labor could monitor employer needs for alien labor on a monthly basis through a national sampling of employers who typically hire alien workers (especially in agriculture, hotels and motels, restaurants, and construction firms). The ceiling on visas to be issued in any given year would have to be set high enough to provide legal temporary immigration opportunities for a significant proportion of the workers who now migrate illegally to the U.S.; otherwise illegal immigration would continue at an undiminished pace.

It should be emphasized that the proposed program would not imply a major expansion of the supply of alien labor in this country. Most of the temporary visa holders should not be viewed as new entrants to the U.S. labor force; the vast majority will already have had one or more work experiences in the U.S., and would have gone again as undocumented aliens, had they not received temporary worker visas.

At least initially, the temporary worker visa program would be limited to Mexican workers. The desirability of restricting the program to Mexico stems from the following considerations:

(a) The overwhelming predominance of Mexicans in the flow of undocumented aliens (at least 60 percent are Mexicans, according to most estimates).

(b) The desirable characteristics of most Mexican migrants, by comparison with migrants from other sending countries (studies show that Mexicans remain in the U.S. for shorter periods of time, make less use of tax-supported social services, and because of their lack of education, specialized job skills and English language competence are less likely to compete successfully with native American workers for higher-paying jobs). In particular, Mexicans are more likely than migrants of other nationalities to abide by the time limitation on employment in the U.S., because of their well-established seasonal or "shuttle" pattern of migration to the U.S.

(c) Our historic, "special" relationship with Mexico.

(d) The severity of the current economic crisis in Mexico, and hence the need for a temporary worker program to ameliorate the hardship and economic dislocations which would result from an effective law prohibiting U.S. employers from hiring undocumented aliens.

The main benefits of the proposed system of temporary worker visas could be summarized as follows:

(1) By regulating the entry of Mexican labor it will serve to bring within the law a large proportion of alien participation in the U.S. labor market, thus increasing public confidence in our legal system and enabling alien workers to seek legal redress of grievances against U.S. employers.

(2) It will significantly reduce the volume of illegal immigration from Mexico. Those who currently enter the U.S. illegally will have strong incentives to seek temporary worker visas: Such visas will eliminate the need to pay "coyotes"—professional smugglers of alien workers—for assistance in illegal border crossings.

The proposed system would also eliminate the physical risks involved in unassisted border crossings in sparsely populated areas. Finally, it would reduce the risk of economic exploitation and other abusive practices by U.S. employers (e.g., reporting undocumented alien employees to the INS to avoid paying them at the end of a job).

(3) It will reduce the incentive for U.S. employers to hire undocumented aliens, particularly if an employer sanction law with severe financial penalties is enacted. If such sanctions are imposed, U.S. employers will have a strong incentive to hire legal temporary workers rather than undocumented aliens, even if the cost of legal alien labor is somewhat higher.

(4) A key feature of the proposed system is its avoidance of pre-arranged contracts between U.S. employers and alien workers. This differentiates it from the former "bracero" program of contract labor, as well as the current system of "H-2" visas, both of which have had the effect of tying the alien worker to a particular U.S. employer who solicited his admission to the U.S. as a temporary worker. There is a great danger of exploitation under this type of temporary worker program.

By eliminating pre-arranged contracts, the proposed system would foster free-market competition among U.S. employers for alien labor. The absence of contracts may tempt some employers to commit certain abuses, and an appropriate mechanism would have to be established to monitor exploitative employer practices; but all experts agree that a program of worker-initiated visas would pose far less danger of exploitation than an employer-initiated system.

(5) The proposed issuance of visas through U.S. Consulates in Mexico will also reduce exploitation by eliminating "middlemen" on the Mexican side. One of the worst abuses committed under the earlier "bracero" program was the extraction of bribes by Mexican authorities and others at the local and state levels who were involved in recruiting labor for the program.

(6) The proposed system will benefit U.S. workers as well as aliens, since the use of legal alien labor has a less depressing effect on wage scales and working conditions than the use of undocumented alien labor.

(7) It would enable U.S. employers to meet legitimate work force needs, particularly for seasonal labor.

(8) It would keep open a critically important "safety valve" for Mexico, and cushion the impact of an effective U.S. employer sanction law on the Mexican economy.

(9) It would have the effect of encouraging the existing, temporary character of most Mexican migration to the U.S. while discouraging permanent settlement here.

It is clear that the proposed system will not bring illegal immigration to a halt, unless the quota of visas is set extremely high and awareness of the temporary visa system is pervasive among the Mexican population. Many economically desperate Mexican peasants who cannot obtain a temporary worker visa will continue to seek employment in the U.S. as undocumented aliens; but the prospect of obtaining a visa at some point in the near future may deter substantial numbers of Mexican workers whose economic needs are less acute from emigrating illegally. Those who do succeed in obtaining visas will, of course, drop out of the flow of undocumented aliens.

(4) Declare an amnesty for illegal aliens who entered the U.S. before 1972. Such aliens would not be required to return to Mexico and apply for a visa in order to legalize their status (as they are required to do under present law). Most experts agree that U.S. efforts at controlling illegal migration should be concentrated on preventing future migration rather than apprehending and deporting those who have lived illegally in this country for long periods. Legalizing the status of such persons will make them less vulnerable to exploitation by employers and generally equip them to play a more constructive role in American society.

(5) Encourage and assist the Mexican government in reorienting its rural development policy toward small-scale, labor-intensive rural industrialization. This is the most important policy recommendation, since it is the only approach which addresses the root causes of the problem, within Mexico. None of the previously suggested measures, nor any of the more restrictive immigration policies advocated by labor leaders and others, will have any significant long-term effect upon the flow of illegal migrants from Mexico in the absence of a new strategy of rural development in Mexico. The present strategy, as practiced with little modification since the 1940's, involves concentrating government resources on huge physical infrastructure investments to assist large-scale agricultural producers situated in high-productivity, irrigated zones. The objectives of this investment strategy have been to (1) increase agricultural production, and thus eliminate importation of basic food commodities; and (2) reduce rural unemployment indirectly, by increasing the demand for labor by large-scale producers. The results of this strategy have not been encouraging; increases in agricultural production have lagged far behind production increases in other sectors of the economy, and the importation of basic food commodities increased sharply in the 1970-75 period. Moreover, the capacity of the rural sector to absorb surplus labor has not increased appreciably—during a time of explosive natural population increase—due to the capital-intensive production techniques employed by the principal beneficiaries of government investments. Huge investments by the World Bank during the past five years have also been biased toward large-scale, commercial agriculture in high-productivity zones.

From 1971 to 1975 the proportion of Mexican federal government revenues invested in the rural sector rose from 13 to 20 percent, and, as just noted, there was also a major increase in international assistance for Mexican rural development projects. Rural unemployment has been alleviated somewhat since 1971 by short-term public works projects (e.g., labor-intensive construction of feeder roads in rural areas), but the employment impact of such projects is usually limited to a few months. Only a small share of the government's resources for rural development, and none of the international assistance, has been devoted to small-scale rural industrialization projects. A rural industries program was launched in 1973, but it is limited to ejidos (rural communities formed as a result of land reform), and the number of communities benefited by the program thus far is under 400.

Much greater attention should be devoted to programs for the direct creation of reasonably well-paid, non-agricultural employment opportunities for rural dwellers. My research strongly indicates that this is likely to be the single most effective policy instrument for reducing rural out-migration, both to the United States and to urban centers within Mexico. Of the rural communities studied intensively in my project, the only one which has experienced a sharp decline in out-migration in recent years is a community in which many small-scale, family-owned textile factories have been established during the same time period. While in this case the factories were set up through private initiative, there is a strong desire for government action to create rural industires in all of the communities studied. When asked, "Suppose that the government wants to help your community in some way, and that you could choose the [public] work or improvement that the government is going to provide . . . which work or improvement would you prefer that the government make here?", more of my respondents (37 percent) mentioned "industries" or "factories" than any other type of government project. Another 8 percent wanted the government to do something to create new sources of employment, without specifying the type of employment. In the communities included in my study, other types of government investments (e.g., in roads, land reform, education, health care, electricity, potable water system) have had little effect on out-migration, and some government investments seem to have stimulated out-migration. These findings suggest that merely increasing the allocation of public funds for "rural development" (in the conventional sense of the term) probably will not achieve the objective of significantly reducing the flows of migrants to the U.S. and to cities within Mexico.

Rural industries could include food processing, textile production, shoe and furniture manufacturing, and many other types of enterprises. Efforts to stimulate the creation of such industries should be concentrated initially in the five Mexican states which have provided more than half of the total apprehended illegals from Mexico since 1969—Guanajuato, Chihuahua, Michoacan, Zacatecas, and Jalisco. The owners of such industries should be compelled to use labor-intensive technologies, and minimum wage laws affecting their employees should be strictly enforced.

The United States should use its leverage in international financial institutions (particularly the World Bank, the Inter-American Development Bank, and the International Monetary Fund) to encourage a much greater effort by the Mexican government in the area of rural industrialization. Channeling our capital resources through international institutions is far preferable to direct U.S. aid to Mexico, which would not be acceptable to the Mexicans for domestic political reasons.

This approach to the problem would require a substantial increase in U.S. capital commitments to the World Bank and the Inter-American Development bank. In 1976 these institutions provided funds for an "integrated rural development program" (PIDER) in Mexico. The *second* phase of this program, to commence later this year, will reportedly include financing for labor-intensive rural industries as well as labor-intensive rural public works projects (e.g., road-building and soil conservation). However, the probable level of funding is far too low to have a significant impact on migration to the United States. Estimates indicate that the integrated rural development program in Mexico is capable of absorbing productively at least three times the proposed amount of funds. Financing for this program could be increased through a special appropriation to the IDB's Special Trust Fund, and through U.S. appropriations for general replenishment of World Bank capital. U.S. representatives on the World Bank and IDB boards could emphasize that increased U.S. contributions to both institutions are intended specifically to support employment-generating projects in Mexico.

A tripling of international development bank efforts in this area is both feasible and highly desirable from the standpoint of reducing illegal immigration. All available evidence suggests that resources spent to reduce the "push" factors in Mexico and other sending countries will have far greater impact on the flow of illegal aliens to the U.S. in the medium-to-long run than resources spent to implement new unilateral restrictive measures. This is, in short, the most "cost-effective" approach to the problem.

(6) The U.S. should encourage the Mexican Government to decentralize its existing family planning program, and provide financial assistance through international lending institutions to permit the expansion of the program. As noted above, the Mexican program of family planning seems to have made some gains among the urban population, but its impact on rural areas—where 40% of the national population still lives—has been extremely limited. This limited impact is directly attributable to the fact that government investments in the family planning program have been concentrated largely in urban areas rather than the countryside, where the problems of low income, low education, and strong Catholic Church influence which impede the adoption of family planning practices are most severe. The continuing political sensitivity of the population control issue within Mexico precludes any direct U.S. financial assistance to the government's program; but the World Bank has already granted Mexico a loan for this purpose, and additional aid through international lending agencies would be welcomed.

SOURCES OF DATA

The preceding paper draws extensively upon preliminary findings from a three-year (and continuing) study of the causes and consequences of Mexican migration to the U.S. and to cities within Mexico, conducted in nine carefully selected rural communities in the state of Jalisco. Some of the findings included here were initially reported in Wayne A. Cornelius, "Outmigration from Rural Mexican Communities," pp. 1–40 in Interdisciplinary Communications Program, Smithsonian Institution, *The Dynamics of Migration: International Migration* (Washington, D.C., 1976; ICP Occasional Monograph Series, No. 5, Vol. 2); and in W. A. Cornelius, "Mexican Migration to the United States: The View from Rural Sending Communities," *Monographs on Migration and Development* (Cambridge, Mass.: Center for International Studies, M.I.T., 1976; No. C/76-12).

Other findings are drawn from a 25 percent sample of 1,000 two to 2½-hour survey interviews conducted in Mexico in July-August, 1976; these preliminary findings are reported here for the first time. The interviewees, all of whom were interviewed in their own homes, include men who have migrated illegally to the U.S., men who have worked there legally, and men who have been apprehended at least once by the INS, and those who escaped detection. This research is currently supported by a grant from the Center for Population Research, National Institute of Child Health and Human Development, National Institutes of Health. Previous sources of financial support include the International Program for Population Analysis (Interdisciplinary Communications Program, Smithsonian Institution) and the Social Science Research Council.

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10.

The Characteristics and Role of Illegal Aliens in the U.S. Labor Market: An Exploratory Study

by

David S. North
Marion F. Houstoun

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EXECUTIVE SUMMARY

Objectives

The primary objective of this small study, an offshoot of a longitudinal study of the role of recent immigrants in the labor market, was an exploratory one: to secure heretofore unavailable empirical data on the characteristics and experiences of illegal aliens in the U.S. labor market. To provide a framework for understanding those data and some perspective on this complex phenomenon, other often widely scattered and unanalyzed information relating to illegal immigration, especially as it concerns the labor market, is also presented. In addition, a preliminary analysis of the labor-market role and impact of illegals, and their manpower policy implications, is offered.

Methodology

With the cooperation of the Immigration and Naturalization Service (INS) of the Department of Justice, a survey instrument was administered by bilingual interviewers unaffiliated with INS to 793 apprehended illegal aliens, both Mexican and non-Mexican, 16 years of age or more, who had worked for wages at least two weeks in the United States. The interviews were conducted in 19 sites across the nation, primarily in INS District Offices in Los Angeles, New York City, San Antonio, Chicago, Miami, Newark, San Francisco, Detroit, Seattle, and Washington, D.C. A limited number of interviews were also held in INS Border Patrol offices in various sites at the Mexican and Canadian borders. In addition, a small number (51) of unapprehended illegals were interviewed in New York City and Washington, D.C. to provide some insight into possible differences between apprehended and unapprehended illegals. To secure as high a level of cooperation and honesty as possible, all interviews were voluntary, and neither the name nor the address of respondents was recorded.

The non-response rate was unexpectedly low (around 5%), and most respondents answered detailed questions about their experiences in the U.S. labor market, the amount of money they had sent home, the number of trips they had made to the U.S. in the last five years, the amount of money they had paid a smuggler, if they had been smuggled, and the number of times they had been apprehended by INS. The completeness of the interviews and the frequency with which the respondents gave answers contrary to their self-interest suggest that the survey results can generally be regarded as reliable.

The survey data were analyzed according to the 793 apprehended illegal alien respondents' region of origin (Eastern Hemisphere [EH respondents]; Western Hemisphere, excluding Mexico [WH respondents]; and Mexico); location of most recent U.S. job (East Coast; Mid- and Northwest; Southwest, excluding California; and California); cumulative duration in the U.S. (less than two years; two or more years); type of employment in the U.S. (agriculture; nonagriculture); entry technique (EWI;* visa abuser); English-speaking ability (spoke English; did not speak English); and age (16-24; 25-34; 35+). Data on the 51 unapprehended illegals were handled separately. Cross tabulations were also run for selected groups of apprehended respondents: those whose most recent U.S. job had been in the New York City, Los Angeles, San Antonio, or Chicago standard metropolitan areas (SMSAs), and those whose most recent U.S. job had been in one of the 23 U.S. counties that border Mexico.

Respondents' region of origin and the location of their most recent U.S. job, which was in some instances different from the location of their apprehension and interview, were as follows:

Distribution of Region of Origin of Apprehended Illegal Alien Respondents, by Location of Most Recent U.S. Job

Region of Origin	Total	California	Southwest[1]	Mid- and Northwest	East Coast
Mexico	481	181	222	66	12
Western Hemisphere, exc. Mexico	237	41	1	18	177
Eastern Hemisphere	75	9	0	20	46
TOTAL	793	231	223	104	235

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[1] Defined in this study as the states of Texas, Arizona, New Mexico, Oklahoma, and Colorado.

Source: Linton & Company Illegal Alien Study, 1975.

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*An INS term referring to aliens who illegally enter the nation (i.e., "enter without inspection"), as contrasted with aliens who abuse a nonimmigrant visa by taking unauthorized employment or by remaining in the nation beyond the always temporary period permitted by their visa.

It is important for the reader to note that because the number, distribution, and characteristics of illegals are not known, and because random sampling from that population is not possible, a representative sample could not be drawn from it. Thus, although the sampling strategy used in the survey resulted in selection of a diverse collection of case histories of apprehended illegals with work experience in the U.S., it was not designed to produce a representative sample of illegals, or of apprehended illegals, in the U.S. labor market. Extrapolation of the quantitative survey results to the universe from which the sample was drawn thus requires judgment, and the reader must remain aware that generalizations reached by such a procedure may be in error. The researchers have therefore made no attempt to estimate the number of illegals currently in the nation or the distributions of their characteristics; however, in considering the role and impact of illegals on the labor market, they have drawn upon their studies of alien workers, both legal and illegal, to develop tentative conclusions that are consistent with, and sometimes strongly indicated by, the survey results.

Background

Illegal immigration is not a new phenomenon. Nevertheless, despite only minimal growth in INS resources, the number of deportable aliens located by that agency has risen rapidly. In the decade ending in FY 1974, the annual number of apprehensions of illegal aliens steadily increased from 86,597 in FY 1964 to 788,145. Thus, in recent years, the number of apprehended illegals has exceeded the number of aliens annually admitted as immigrants, which has been roughly 400,000 since the 1965 Amendments to the Immigration & Nationality Act closed U.S. borders by extending to the Western Hemisphere numerical restrictions placed earlier upon the Eastern Hemisphere.

Historically, illegal immigration has been largely confined to Mexican wetbacks, i.e., to EWIs who crossed the southwestern border illegally. INS has therefore consistently concentrated most of its law enforcement resources near that border, where most apprehensions continue to be made. In FY 1974, for example, 90.1% of all apprehensions were of Mexican illegals; most were EWIs located near the Mexican border by INS Border Patrol staff.

Unlike Mexican apprehended illegals, most non-Mexican apprehended illegals enter with nonimmigrant visas, in particular tourist visas, which they subsequently abuse by remaining in the nation or by finding unauthorized employment (Most nonimmigrant visas specifically proscribe employment in the U.S.; with few exceptions, only aliens who are immigrants may legally work in the nation.)

In FY 1974, almost as many apprehended illegals came from the Caribbean or from Central or South America (34,948) as came from the rest of the world, excluding Mexico. Although the number of apprehended illegals from that region is small in comparison with the number of apprehended Mexicans, it has progressively increased and indeed doubled in the last decade. Further, during that same period, there have been explosive increases in the annual number of mala fide nonimmigrant visa applications, as well as in the annual number of nonimmigrants (in particular, tourists) and legal immigrants admitted in the U.S. from that region. Taken together, those data suggest that illegal immigration is increasingly a Western Hemisphere phenomenon. More generally, the explosive increase in the number of nonimmigrants admitted annually into the nation (in FY 1974, almost 7 million nonimmigrants entered the U.S.; more entered New York City [1.8 million] that year than entered the nation in FY 1964); the lack of post-admission controls over their departure or activities while here; and the allocation of most INS law enforcement resources to staff and offices near the Mexican border suggest that INS apprehension statistics are more likely to indicate the number and national origin of the flow of illegal immigration across that border than the number and national origin of the stock of illegals in the nation.

Survey Findings

1. Motivation in Coming to the U.S. Almost three-quarters (74.2%) of the 793 respondents reported they came to the U.S. to get a job. The 481 Mexican illegals were more likely to have come to the U.S. for economic reasons than were the 237 illegals from other nations in the Western Hemisphere (WH respondents) or the 75 illegals from the Eastern Hemisphere (EH respondents): 88.9% of the Mexican, 60.4% of the WH, and 23.0% of the EH respondents reported that they came to the United States in order to get a job. Other reasons reported by the respondents were "to see U.S." (8.9% of the study group), "to study" (7.5%), "to visit relatives" (4.4%), and "other" (4.8%). In addition, though all respondents were required by INS to return to their country of origin, a majority (414 respondents) said they planned to come back to the United States, primarily 283 reported, to get (or, in a few instances, to keep) a job here.

2. Entry Technique. A substantial majority (70.7%) of the 785 respondents to a question concerning their status at entry were EWIs. In addition, 21.3% had entered the U.S. with a tourist visa; 4.5%, with a student visa; and 1.7% had

been crewmen. The remaining 1.9% had entered with other kinds of visas. Thus, most respondents (555) were EWIs, though a substantial minority (238) were visa abusers. As predictable, virtually all (95.4%) of the Mexican respondents reported that they had been EWIs. The majority (55.5%) of the WH respondents had entered as tourists; an unexpected 37.6% of all respondents from this region were EWIs. Only 17.3% of the EH respondents had been EWIs, as compared with 34.7% who had entered with student visas, 26.7% who had been tourists, and 13.3% who had been crewmen.

3. Duration in the U.S. Respondents in the study group had been in the U.S. for an average of 2.5 years. The majority (53.4%) had been here two or more years; those 423 respondents had been in the U.S. for an average of 4.2 years. The 370 respondents who had been here less than two years had been in the U.S. for an average of .5 years. EH respondents had been in the nation an average of 3.1 years, as compared with 2.5 and 2.4 years for the WH and Mexican respondents, respectively.

4. Age. Most respondents were young adults. The average age of the study group was 28.5 years, as compared with 39.0 years, the average age of males in the U.S. labor force. More precisely, 40.1% of the respondents were 16-24 years of age; 38.0% were 25-34, and 21.9% were 35 or older.

5. Education. The study group had about half the education of the U.S. civilian labor force 18 years or older: an average of 6.7 as compared with 12.4 years of schooling. Respondents from Mexico had substantially less education (4.9 years of schooling) than WH respondents, and WH respondents had significantly less (8.7 years) than EH respondents (11.9), who came close to the U.S. norm.

6. Sex and Marital Status. The respondents, like apprehended illegals generally, were predominantly male (90.8%), and were less likely to be married than U.S. men of the same age. For example, 36.9% of the 318 respondents who were 25-34 years old were single, as compared with 15.9% of U.S. males the same age. Less than half (47.4%) of all respondents were married at the time of the interview.

7. Dependents in Country of Origin. Despite the relatively low incidence of marriages in the study group, respondents reported substantial family responsibilities in their country of origin. Almost 80% of all respondents reported that they supported or helped to support at least one relative in their country of origin. As a group, respondents supported or helped support an average of 4.6 persons in their homeland.

The Mexican respondents were more likely than WH or EH respondents to report country of origin dependents, and they were more likely to report more dependents.

Percentage of Apprehended Illegal Alien Respondents Reporting Country of Origin Dependents and Average Number of Country of Origin Dependents, by Region of Origin

Dependency Indices	Total	Eastern Hemisphere	Western Hemisphere exc. Mexico	Mexico
Percentage of respondents reporting 1 or more country of origin dependents	79.7	43.7	72.1	88.9
Average no. of country of origin dependents of total no. of respondents	4.6	1.8	3.6	5.4
Total no. of respondents	793	75	237	481

Source: Linton & Company Illegal Alien Study, 1975

8. Remittances to Homeland. With an average gross weekly wage of $120, as a group, respondents reported that they sent an average of $105 home a month. Mexican respondents, who reported the lowest earnings of respondents from any region of origin, also reported the highest monthly remittances to their country of origin.

Average Weekly Wage and Monthly Remittance to Homeland of Apprehended Illegal Alien Respondents, by Region of Origin

Region of Origin	Average Weekly Wage	Average Monthly Remittance	No. of Respondents
Mexico	$106	$129	481
Western Hemisphere, exc. Mexico	127	76	237
Eastern Hemisphere	195	37	75
TOTAL	120	105	793

Source: Linton & Company Illegal Alien Study, 1975.

9. Relatives in U.S. Seventeen percent of the study group (135 respondents) reported that their spouse lived in the U.S.; 12.7% reported they had one or more children here. Respondents here two or more years were five times as likely to have a spouse in the U.S. as those here less than two years (27.4% and 5.1%, respectively). WH respondents were more likely to report spouses in the U.S. than either EH or Mexican respondents (27.8% as compared with 21.3% and 11.0%, respectively). More generally, 33.8% of the study group reported the presence of at least one relative (spouse, child, parent, or sibling), whose legal residence here may permit respondents to legalize their status. WH respondents were the most likely to have one or more such relatives here (38.4%), followed by EH respondents (33.3%), and Mexican respondents (31.6%).

10. Number of Trips to Homeland. The Mexican respondents were substantially more likely to visit their homeland than respondents from other regions. Since 1970, the Mexican respondents had averaged 4.5 trips to their country of origin, as compared with 1.8 and 1.4 trips for the EH and the WH respondents, respectively.

11. Apprehensions by INS. All respondents in the study group were in the custody of INS at the time of the interview. Mexican respondents were, however, eight times more likely to report a previous apprehension than non-Mexican respondents, though respondents in the latter group had been in the U.S. for a slightly longer period of time than the former group (2.4 years for the Mexicans; 2.6 years for the non-Mexicans).

12. The Illegal Network. Respondents were least likely to answer questions relating to other illegals. Nevertheless, almost half (48.1%) of the 621 illegals who responded reported they knew at least one illegal from their hometown; more than half (60.9%) of 604 respondents reported that they had met at least one illegal in the U.S., and 41.4% of 688 respondents reported that they lived with at least one other illegal in the U.S. As a group, respondents knew an average of 17.1 illegals in the U.S. The Mexican respondents were more likely to be involved in an illegal network than respondents from other regions; e.g., 53.9% of the Mexican respondents, but only 27.5% of the WH and 14.1% of the EH respondents reported that they lived with other illegals.

13. English-Speaking Ability. Fully 63.9% of the respondents could not speak English. Those who could, usually had learned it in school in their country of origin. The Mexican respondents were the least likely to speak English: only 23.6%

of that group spoke any English, as compared with 46.8% of the WH and fully 83.8% of the EH respondents. As expected English-speaking respondents were less likely to have been previously apprehended by INS and were more likely to have had higher wages and higher status jobs in the U.S. than non-English speaking respondents.

14. Work Experience in Home Country. Despite their relative youth, few respondents were new entrants to the labor market when they entered the U.S. Less than 10% of the study group had worked for wages less than one year. As a group, respondents had worked for wages in their home country an average of 9.4 years. WH respondents had been employed in their homeland for an average of 10.7 years, as compared with 9.4 years for the Mexican and 5.8 for the EH respondents.

15. Unemployment. Respondents appear to have had an unemployment rate of 10.2% since 1970 -- that is, on average, 10.2% of the respondents were both without jobs and looking for work during the period 1970-1975.

16. Participation in the U.S. Labor Market. The 793 respondents had been employed in the U.S. for an average of 2.1 years. Respondents in the U.S. less than two years (46.6% of the study group) had been employed for an average of only .5 years. Respondents in the U.S. two or more years had been employed for an average of 3.4 years. More precisely, of the 782 illegals who responded to the question, 43.5% had worked for wages in the U.S. for less than 1 year; 12.7% had worked for from 1 to 2 years; 14.2%, for from 2 to 3 years; 20.8% for from 3 to 6 years; and 9.0%, from 6 to 20 years.

In addition, 40.1% of the study group had held one U.S. job for at least one year, and 25.7% had held that job two or more years. Respondents working in the Southwest, those employed in U.S. agriculture, and those from Mexico were the least likely to report long job tenure of any of the subgroups of respondents considered.

17. Occupation in Country of Origin. Respondents were substantially more likely to have been low-skilled than skilled workers in their homeland. The 628 respondents who had been employed in their country of origin since 1970 were twice as likely to have been farmworkers (35.7%) as white-collar workers (17.6%), and they were even more likely to have been blue-collar workers (41.5%). Few, however, had been service workers (5.2%). Respondents' occupation in their country of origin since 1970 was highly correlated with their region of origin and education. For example, the 407 Mexican respondents (4.9 years of schooling) were the most likely to have been farmworkers in their homeland (49.3%) and the least likely to have

been white-collar workers (6.8%). The 48 EH respondents (11.9 years of schooling) were the most likely to have been white-collar workers (47.9%) and the least likely to have been farmworkers (2.1%). The 173 WH respondents (8.7 years of schooling) were less likely than EH respondents to have been white-collar workers in their homeland (34.1%) and were more likely to have been farmworkers (12.7%).

18. Comparison of Country of Origin and U.S. Occupations. Almost half the respondents who had been farmworkers in their home country moved into nonagricultural work in the U.S., and two-thirds of the respondents who had been white-collar workers in their country of origin became blue-collar or service workers. Thus, as the following table suggests, though the U.S. labor market tended to homogenize the occupational status of these 628 respondents, its net effect was a depressive one. Their occupational distribution in their most recent U.S. job was significantly less like that of U.S. employed persons than it had been when they were employed in their homeland.

TABLE V-3

Distributions of Occupations of Apprehended Illegal Alien Respondents in Their Country of Origin and in Their Most Recent U.S. Job, and of U.S. Employed Persons

(as percent of group)

Occupation Group	Illegal Aliens Employed in Country of Origin	Illegal Aliens Employed in Most Recent U.S. Job	U.S. Employed Persons, 1974
White Collar	17.8	5.5	48.7
Professional, Technical & Kindred Workers	5.6	1.5	14.6
Owners, Managers & Administrators, except Farm	3.9	1.3	10.4
Sales Workers	5.3	1.1	6.3
Clerical & Kindred Workers	3.0	1.6	17.4
Blue Collar	41.5	55.2	34.2
Craft & Kindred Workers	14.8	15.3	13.3
Operatives	17.6	25.1	16.1
Nonfarm Laborers	9.1	14.8	4.8
Service Workers	5.0	20.4	13.3
Farmworkers	35.7	18.9	3.6
Total[b]	100.0	100.0	99.8

Source: Columns 1-2, Linton & Company Illegal Alien Study, 1975, volume 3, Statistical Abstract of the United States, 1974, Table 368.

[a] Of the 793 respondents, 148 respondents were not employed in country of origin, 1970-1975, and 17 respondents did not provide this information. These respondents were excluded from data on respondents' most recent U.S. job for comparative purposes.

[b] Percentages may not add to 100 due to roundoff.

19. Occupation in U.S. Since the 1965 Amendments to the Immigration & Nationality Act went into effect, aliens can become immigrants only if they are qualified relatives of U.S. legal residents, political refugees, or needed workers. Aliens applying for immigrant status as needed workers are automatically denied labor certification by the Department of Labor if they are seeking U.S. jobs in "Schedule B" occupations, e.g., assemblers, cleaners, clerks, kitchen helpers. Three-quarters (575) of the 788 respondents who reported their most recent U.S. occupation were employed in a Schedule B job; 8 had been self-employed, and 205 did not have Schedule B jobs, though a number were employed in low-skilled jobs, e.g., were working as waiters or dry-cleaning operatives. The occupational distribution of these 788 respondents was as follows: professional, technical and kindred (1.8%); owners, managers, and administrators, except farm (1.5%); sales workers (1.5%); clerical and kindred (1.6%); craft and kindred (16.0%); operatives (27.5%); nonfarm laborers (13.7%); farm laborers (15.6%); service workers (20.7%).

20. Wages. The average hourly wage of the 793 respondents in their most recent U.S. job was $2.71. Average hourly wages differed substantially according to respondents' region of origin and the location of their U.S. job. The Mexican respondents earned an average hourly wage of $2.34, as compared with average hourly wages of $3.05 for WH and $4.08 for EH respondents. The 223 respondents employed in the Southwest earned an average hourly wage of $1.98, as compared with $2.60, the average hourly wage of the 231 California respondents; $3.18, the average hourly wage of the 104 respondents employed in the Mid- and Northwest; and $3.29, the average hourly wage of the 235 respondents employed on the East Coast. In addition, the 136 respondents employed in U.S. agriculture earned a lower average hourly wage than the 657 respondents employed in nonagricultural work: $2.11, as compared with $2.83.

The low hourly wages of most respondents in the study group are consistent with the results of an INS survey of the wages of almost 48,000 illegals who were employed when apprehended in January-March 1975. The lower wage levels in the INS study group are probably a consequence of the very high proportion of agricultural to nonagricultural and southwestern to nonsouthwestern respondents in the INS group, as compared with the L&Co. group.

TABLE V-9

Distributions of Hourly Wage in Most Recent U.S. Job of Apprehended Illegal Alien Respondents in INS and L&Co. Study Groups

(as percent of group)

Hourly Wage	INS Study Group	L&Co. Study Group[1]
Less than $2.50	65.2	51.2
$2.50 - $4.49	30.2	41.5
$4.50 - $6.49	3.5	5.5
$6.50 or more	1.1	1.8
TOTAL	100.0	100.0
No. of Respondents	47,947	779

Sources: Column 1, unpublished INS data for apprehended illegal aliens employed when found, January through March 1975; column 2, Linton & Company Illegal Alien Study, 1975.

[1] Hourly wage data unavailable for 14 of the 793 respondents.

21. Average Hourly and Weekly Earnings and Hours. Respondents (excluding those in agriculture and private households) earned substantially less than U.S. production and nonsupervisory workers: an average hourly wage of $2.66 as compared with $4.47. As the following table indicates, the 609 respondents earned between 35% and 81% of the average hourly wage of these U.S. workers in each of the seven industrial divisions. In addition, respondents worked longer hours but consistently earned significantly less per week than U.S. workers.

TABLE V-10

Average Gross Hourly and Weekly Wage, and Weekly Hours, of Apprehended Illegal Alien Respondents in Their Most Recent U.S. Job and of U.S. Production or Nonsupervisory Workers (PNW), by Industry in 1975

INDUSTRY DIVISION	AVG HOURLY WAGE		AVG WEEKLY WAGE		AVG WEEKLY HOURS		No. of Illegals[1]
	Illegals	U.S. PNW	Illegals	U.S. PNW	Illegals	U.S. PNW	
Agriculture, Forestry & Fisheries	$2.07	*	$110.37	*	53.6	*	134
Mining	3.00	$5.79	133.00	$244.93	60.0	42.3	1
Contract Construction	2.90	7.15	130.50	265.27	62.0	37.1	126
Manufacturing	2.92	4.73	131.22	186.67	61.3	39.0	290
Transportation & Public Utilities	2.77	5.75	134.00	220.28	60.6	38.7	10
Trade: Wholesale & Retail	2.57	3.71	112.00	124.66	63.6	33.6	152
Finance, Real Estate & Insurance	3.32	4.08	117.00	148.18	38.0	36.3	6
Services, except Private Households	2.70	3.98	121.75	134.13	45.8	33.7	57
Private Household Services	1.63	*	66.50	*	47.0	*	33
All Industries (excluding Agriculture & Private Households)	2.66	4.47	117.63	160.47	46.3	35.9	609

* Not Available

Sources: Columns 1, 3, 5, and 7, Linton & Company Illegal Alien Study; columns 2, 4, and 6, U.S. Department of Labor, Employment and Earnings, Volume 22, No. 12 (June 1976), Tables C-1, C-2.

[1] Data for 17 of the 793 respondents who were self-employed or omitted industry, wage, or hours are omitted. For tabulation purposes, the total number of illegals excludes 134 respondents in agriculture and 33 in private households.

NOTE: Note that average hourly wage times average weekly hours may not equal average weekly wage. In fact, for these data, that product is consistently greater than the average weekly wage, indicating a tendency for respondents with lower wages to work longer hours.

22. The Question of Exploitation. Four sets of factors were regarded as indicators of exploitation of respondents in their most recent U.S. job:

- minimum wage violations;
- respondents' perceptions of their working conditions;
- respondents' reports of the presence of other illegals in their workplace; and
- payment of wages in cash.

Minimum Wage Violations. More than a fifth (23.8%) of the 766 respondents who were wage workers and for whom complete data on their most recent U.S. job were available appear to have been paid less than the minimum hourly wage, which was roughly defined for this study as $1.80 for respondents employed in farms, forestry, and fisheries; $2.00 an hour for those employed in sales, services, or private households; and $2.10 for those employed in other industries.

Respondents employed as domestics or farmworkers were more likely to be paid illegal wages than respondents employed in other industries (almost two-thirds of the 23 respondents employed as domestics and one-third of those employed as farmworkers (136 respondents) appear to have been paid less than the minimum wage). In addition, respondents employed in the Southwest, but particularly respondents employed in the 23 counties bordering Mexico, were significantly more likely to be paid less than the minimum wage than respondents employed in other regions in the U.S.

Respondents' Perceptions of Their Working Conditions. Although approximately one-sixth of all respondents were unwilling to make judgments about the practices of their former U.S. employers,

- 17.9% of the entire study group (142 respondents) reported that they had been hired because they were illegal. Respondents employed in the Southwest were two to three times more likely to report they had been hired because they were illegal than respondents employed in California, the Mid- and Northwest, or the East Coast.

- 16.0% (127 respondents) reported that they had been paid less than legal coworkers;
- 11.7% (93 respondents) reported that they had been paid less than the minimum wage; and
- only 3.5% (28 respondents) reported that they had been "badly treated" by their employer.

Other Illegals in the Workplace. Although almost 30% of the study group refused to answer questions relating to other illegals or claimed ignorance concerning the matter, a slight majority of the respondents to this question (306 illegals or 38.6% of all respondents) reported that there was at least one other illegal in their workplace. As a group, respondents had worked with an average of 8 other illegals. The Mexican respondents were three times more likely to report the presence of illegal coworkers as WH or EH respondents. Respondents employed in California, the Southwest, and the Mid- and Northwest were roughly twice as likely as illegals in the East Coast to report illegal coworkers.

Cash Wage Payments. More than one-fifth (22.1%) of all respondents reported that their wages had usually been paid in cash, an obvious means of avoiding the documentation of wages that payment by check would entail, and hence an indicator of possible exploitation. The 68 illegals employed in the counties bordering Mexico were most likely to report payment of wages in cash (63.3%) of any subgroup considered, and respondents employed in the Southwest were more likely to report cash wages (36.0%) than respondents employed in the East (21.0%), in California (14.8%), or the Mid- and Northwest (10.7%).

23. Union Membership. Only 10.2% of the study group reported that they had belonged to a labor union in their country of origin, but 130 respondents (16.4% of the study group) had joined a union in the U.S., and almost half (62 respondents) had belonged for two or more years. Membership in a U.S. union tended to be negatively correlated with low wages as well as the indicators of exploitation described above, e.g., the extremely low-paid respondents employed in the counties bordering Mexico were the least likely to belong to a union in the U.S. -- though they were most likely to have belonged in their country of origin (1.5% belonged to a U.S. union as compared with 17.7% who had belonged to a union in Mexico). Further,

only 1.4% of the low-paid respondents employed in the Southwest reported membership in a U.S. union, as compared with 15.6% of those employed in California, 23.8% of those employed in the Mid- and Northwest, and 29.0% of those in the East Coast.

24. Participation in Tax-Paying and Tax-Using Programs The respondents were more likely to have participated in tax-paying systems (many of which are automatic) than to have used tax-supported programs.

Extent of Participation of Apprehended Illegal Alien Respondents In Tax-Paying and Tax-Supported Programs

Program Activity	Percentage of Respondent Participation
Input	
Social Security taxes withheld	77.3
Federal income taxes withheld	73.2
Hospitalization payments withheld	44.0
Filed U.S. income tax returns	31.5
Output	
Used hospitals or clinics	27.4
Collected one or more weeks of unemployment insurance	3.9
Have children in U.S. schools	3.7
Participated in U.S.-funded job training programs	1.4
Secured food stamps	1.3
Secured welfare payments	0.5

The Characteristics, Role, and Impact of Illegals in the U.S. Labor Market: Preliminary Conclusions of the Researchers

1. Illegal aliens are probably disadvantaged persons, but they do not appear to constitute a homogeneous group. Most respondents in our study group were young disadvantaged adults who came from underdeveloped nations to find employment here. There were, however, significant differences between respondents from Mexico, those from other nations in the Western Hemisphere, and those from the Eastern Hemisphere: in their level of education, occupational status in their native land, ability to speak English, and once here, in the extent of their continuing ties to their homeland and their contact with U.S. governmental agencies, including INS.

Though Mexico is a more advanced nation than most nations sending illegals to the United States today, the Mexican respondents were substantially more likely than non-Mexican respondents to have come from rural areas, to have been farmworkers in their country of origin, to have had less than a primary education, and to speak no English. The non-Mexican respondents, but in particular those from the Eastern Hemisphere, were more likely to come from urban areas, to have had at least some secondary education, to have been employed in white-collar jobs in their homeland, and to speak English. In brief, the socioeconomic status at entry of EH respondents was close to the U.S. norm; WH respondents clustered well below that norm; while the Mexican respondents fell below the norm of this nation's most disadvantaged peoples, its blacks and Chicanos.

The Mexican illegals were also considerably more likely than respondents from other regions to report that they had come here explicitly in search of a job. Once in the United States, they remained more closely tied to their country of origin than did the other respondents: they were more likely to have a spouse and children in their home country, to visit their homeland, and to send money home to relatives. The non-Mexican respondents were, on the other hand, more likely to have a spouse and children here, and to use public services in the U.S., such as schools and hospitals. They were also considerably less likely to be apprehended by INS.

It is reasonable to suppose that these differences between Mexican and non-Mexican respondents are principally the result of the unique physical accessibility of the U.S. to Mexico, which enables Mexicans of a lower socioeconomic class to become illegal aliens and enables Mexican aliens, legal or illegal, to maintain ties to both nations. And, in fact, most Mexican respondents were EWIs who crossed the southwestern border surreptitously, on foot -- an entry technique that requires more in the way of physical endurance, native intelligence, personal ambition, and social contacts with an illegal network than it requires in the way of either money or education. By contrast, a large majority of the non-Mexican respondents were tourist visa abusers, which presupposes a socioeconomic status that will provide a prospective illegal with access to a U.S. consular office abroad, convince a State Department official that the alien's application for a nonimmigrant visa is a bona fide request, and that the alien has the means to travel to his destination and to return to his native land. Further, almost half the EH illegals had entered the U.S. with a student visa, which in most cases presupposes a secondary education and requires an alien to show that he or she has the means to support himself while a student in the U.S.

More generally, however, it seems reasonable to suppose that aliens become illegal workers in the United States only if they have more to gain than to lose by engaging in this illegal business. If that is indeed the case, the low socioeconomic status of most respondents in our study group is likely to be typical of most illegals in the U.S. work force. In particular, aliens who are skilled (and therefore, by implication, more likely to be established) workers in their country of origin are unlikely to become illegal workers in the U.S. The presence in the U.S. labor market of the young but substantially more educated student visa abusers is similarly explained: they, too, are unestablished, with relatively little to lose. Further, like students generally, they are likely to be employed in low-skilled jobs, as were most respondents.

2. Illegals probably cluster geographically. INS and other experts in the field agree, and there are some INS and Visa Office data to support the claim, that illegals are no longer almost exclusively a phenomenon of southwest agriculture, but are increasingly an urban phenomenon, both within and without the Southwest. We suggest that illegals are likely to cluster in the nation in the same manner as legal immigrants. In particular, EWIs crossing the southwest border (who are predominantly but not exclusively Mexican illegals) increasingly appear to migrate to metropolitan areas in that region or to the industrial centers of the Mid-West, as legal Mexican immigrants have historically tended to do. In addition, as immigrants have done since the turn of the century and as immigrants do today, increasing numbers of illegals from other nations in the Western or the Eastern Hemisphere (who are usually visa abusers) cluster in major metropolitan areas in the nation, especially in its principal ports of entry along both coasts, where the supportive ethnic communities they need and the employment opportunities for low-skilled workers they seek, generally coincide.

3. Illegals are probably clustered in the secondary labor market. Most of the respondents in our study group were employed in the secondary sector of the U.S. labor market; i.e., most were employed in low-wage, low-skill, low-status jobs. Less than a quarter were employed in white-collar or skilled blue-collar jobs, and most who were so employed were crafts workers (16%). Further, though respondents generally worked significantly more hours per week than did U.S. production and nonsupervisory workers, their wages were substantially below the average weekly wage of such workers in each of the seven major industrial divisions for which there were comparable data. In addition, a significant minority of respondents

in the study group (more than 20%) were apparently paid less than the minimum wage, particularly domestics, (Mexican) respondents working in Texas, New Mexico, Arizona, or Colorado, and especially those working in the 23 counties that border Mexico.

Respondents' concentration at or near the bottom of the U.S. labor market, with more than three quarters employed in unskilled or semi-skilled jobs, contravened the heterogeneity of the study group. Despite the fact that respondents from Mexico, other nations in the West, and in the East tended to have different characteristics as individuals and workers in their country of origin, their roles in the U.S. labor market were markedly similar. Like recent legal immigrants, the few respondents who had been white-collar workers in their homeland exhibited a strong downward occupational movement upon entry in the U.S. labor market. Respondents were, however, significantly less likely to be employed in farmwork in the U.S. than in their country of origin. Hence the American labor market apparently tends to homogenize at a low level an otherwise more heterogeneous but still predominantly low-skilled work force.

In general, it is reasonable to suppose that if most illegals working in the nation have little education, few skills, and speak little or no English, their employment patterns are likely to resemble those of our survey respondents, i.e., they are likely to be employed as laborers, service workers, or, to a lesser extent, as operatives.

4. Illegals appear to increase the supply of low-wage labor and compete with disadvantaged U.S. workers. If most illegal workers in the U.S. are disadvantaged persons employed in low-level jobs, illegals are of course increasing, to an undetermined degree, the supply of low-wage workers in the nation. It follows, then, that the subgroups of the U.S. labor force with which illegals are most likely to be competing are disadvantaged U.S. workers: the young, the old, members of minority groups, women, immigrants, and the handicapped, who, in some instances, tend to be clustered in the same parts of the nation, e.g., the Spanish-speaking in the Southwest, and minority groups generally and immigrants in major urban centers.

Further, illegals are likely to compete quite successfully in the secondary labor market. On the one hand, current immigration legislation, which makes it illegal for most nonimmigrant aliens to work in the U.S. but specifically exempts employers from any violation of those laws, makes illegals attractive to employers of cheap labor. On the other hand, apart from any consideration of their illegal status, illegal workers appear to be like immigrant workers: highly motivated and hard-working employees, whom U.S. employers generally regard as exceptionally productive workers, despite the fact that few speak English.

5. The major immediate impact of illegals in the U.S. today is probably on the labor market. Most respondents came to the United States explicitly to find employment. We suspect that most illegals who establish a residence in the U.S. similarly came to find jobs, and that those who did not are unlikely to remain in the nation without entering the labor force. Further, if the survey respondents are typical of illegals working in the nation, illegals in the U.S. labor force are substantially more likely to pay taxes than to use tax-supported systems and to support relatives in their country of origin than to have a spouse or children here. Apparently, then, illegals are also likely to have a significant impact on the balance of payments. Almost 80% of all survey respondents sent an average of $151 a month to relatives in their homeland. The Mexican respondents were less likely than the non-Mexican respondents to have a spouse or children in the U.S. or to use public services, but they were more likely to send money home, and to report higher remittances. (We estimate a balance of payments loss of $1.5 billion a year from that source alone, if we assume that there are 1 million Mexicans illegally working in the U.S. and that the Mexican respondents in our study group are representative of that population.)

It is important to note, however, that if illegals settle permanently in the nation -- a question which this study does not address -- their impacts, both direct and indirect, will of course be both more far-ranging and profound. In particular, if illegals working in the U.S. tend to become permanent residents, they can be expected to acquire a U.S.-based spouse and children, to have an impact on population, and to make more use of public services as they become more integrated into the society.

The Impact of Illegals on the U.S. Labor Market

Impact of Illegals. Depending upon the degree to which illegals cluster in specific labor markets, their numbers, and the pre-illegal entry conditions of those markets (e.g., the presence of unions), an increasing supply of highly productive, experienced, but generally low-skilled illegals, who are willing to work in low-level jobs at low wages for long hours, is likely to produce some particular combination of the following five kinds of interdependent impacts upon the markets they enter:

- illegals will maintain or increase productivity;
- they will maintain or increase profits;

- they will maintain or increase the use of labor-intensive work structures;
- they will maintain or depress labor standards in the secondary sector; and
- they will compete successfully with low-skilled legal workers.

Congruence With Manpower Policy. The nation has been making manpower policy decisions for years, but only recently has it regarded them as such. As it evolved within the framework of a society which stresses both the virtue of productivity and the value of the individual, U.S. manpower policy can be viewed as having four principal objectives, with a fifth appearing on the horizon more recently:

- to upgrade the skills of the work force;
- to protect the welfare and rights of the work force;
- to provide employment opportunities for all members of the work force;
- to provide equal employment opportunities for all members of the labor force, regardless of race, color, creed, national origin, or sex; and
- to increase the level of job satisfaction.

The Adverse Effects of Illegals in the Labor Market

If one accepts this broadbrush description of the nation's manpower policy, a continuing influx of illegal aliens into the U.S. labor market will have the following adverse effects:

- it will depress the educational and skill level of the labor force;
- it will depress labor standards in the secondary sector, which in some cases will create an underground market of illegal wages, hours, and workers;
- it will cause a displacement of low-skill legal resident workers;
- it will create a new class of disadvantaged workers, one which inextricably conjoins national origin and illegal status in the U.S.; and

- it will inhibit efforts to improve job satisfaction in the secondary sector.

Given the inherent conflict between what the nation has been, for generations, trying to do in the work place, and the apparent direction of the impact of illegal aliens, we believe that it is important to preserve both the direction and the momentum of the nation's manpower policy, by decreasing the flow of illegal immigration into its labor market.

Recommendations

On the assumption that illegals are for the most part disadvantaged persons whose adverse socioeconomic costs to the U.S. outweigh their benefits as productive low-level workers, we recommend that the Government adopt a more restrictive policy towards illegal immigration and implement more effective means of controlling it, primarily by discouraging their entry into the labor market, which appears to be their principal goal. Further, we recommend that the Government emphasize the prevention of future illegal immigration rather than the removal of illegals currently in the nation. There are three general reasons for advocating the latter approach: administrative (it is more cost effective to prevent the entry of prospective illegals than to apprehend and transport them home again); humanitarian (illegals whose entry is prevented are less badly hurt than those who are apprehended after establishing residence in the U.S.; the possible infringement of the civil liberties of minority-group members associated with the identification and apprehension of illegal residents are similarly avoided); and substantive (illegal immigration appears to set off a chain migration and to come primarily from underdeveloped nations with high population growth rates; i.e., illegal immigration appears to beget more illegal immigration). In the opinion of the researchers, it is the likelihood of continuing generations of disadvantaged aliens attempting illegal entry into the U.S. labor market that poses the most serious threat to the nation, and calls for the adoption of a more restrictive immigration policy as well as for more adequate enforcement of current restrictions.

Within the framework of a restrictive policy and a preventive approach, strategies that discourage the employment of illegals and inhibit their movement into the nation appear the most effective. The recommendations have been divided into three categories: those requiring only agency policy changes, those that also require budgetary decisions, and those that require statutory revisions as well.

Agency Policy Recommendations

Recommendation 1: The Government Should Create Illegals' Employers Strike Forces.

Recommendation 2: The Immigration and Naturalization Service Should Focus More Attention on Visa Abusers.

Recommendation 3: The Government Should Develop Strategies to Discourage the Growth of Illegal Immigration from Specific Regions of Origin.

Recommendation 4: The Labor Department Should Deny Labor Certifications to Employers of Illegal Aliens.

Recommendation 5: Steps Should be Taken to Increase the Prosecution of Document-Abusing Illegal Aliens.

Recommendations Involving Policy and Budget Considerations

Recommendation 6: The Government Should Allocate More Resources, and the State Department Should Allocate More Resources and Prestige, to the Visa Issuance Function.

Recommendation 7: The Government Should Allocate More Resources to INS.

Recommendations Involving Policy, Budget, and Statutory Considerations

Recommendation 8: The Congress Should Enact a Work Permit Program.

Recommendation 9: The Congress Should Remove Elements in the Immigration and Nationality Act Which Facilitate the Legalization of Illegal Aliens.

II. ILLEGAL MIGRATION: PROPOSED SOLUTIONS

The second section of the selections on illegal migration concerns proposed solutions, including past comprehensive legislative proposals, background on specific recommendations relating to enforcement and amnesty, and discussions of temporary worker programs.

A. PAST PROPOSALS

The first selection is Chapter VIII, "Conclusions and Major Recommendations," from the *Preliminary Report* of the Domestic Council Committee on Illegal Aliens (December 1976). This Cabinet-level Committee established by President Ford was the first interagency Executive Branch effort to address the issue, and some of its findings are reflected in the Carter Administration proposals of August 1977.

During both the 92d and 93d Congresses, the House of Representatives passed legislation which, among other things, would have established a graduated series of penalties for the knowing employment of aliens not legally entitled to work in this country; the Senate took no action on the bills. The legislation was reintroduced, as amended by committee and floor action for the last time in the 95th Congress, as H.R. 1663. This is the so-called Rodino bill, although at its last introduction, House Judiciary Committee Chairman Peter Rodino was not a cosponsor. An excerpt is included from House Rept. No. 94–506 on H.R. 8713 from the 94th Congress, the last time the bill was reported by the House Judiciary Committee.

President Jimmy Carter's August 4, 1977 message to the Congress entitled "Undocumented Aliens" outlines a series of administrative and legislative proposals for reducing the increasing flow of undocumented aliens in this country and . . . [regulating] the presence of the millions of undocumented aliens already here." Elements of the President's proposal requiring legislative action were included in the bill introduced in the 95th Congress on behalf of the administration as H.R. 9531 and S. 2552. A comparative analysis of the major provisions of H.R. 1663, the House Judiciary Committee bill discussed above, and H.R. 9531/S. 2552 is included. This is followed by the summary from a "Statement of Position Regarding the Administration's Undocumented Alien Legislative Proposal," a critical analysis of the President's August 1977 proposal by the Mexican American Legal Defense Educational Fund (MALDEF).

Action was not taken on the Administration bill during the 95th Congress beyond hearings by the Senate Judiciary Committee. An Administration bill has not been introduced to date in the 96th Congress, nor has legislation been introduced relating to undocumented aliens by key members of the House or Senate Judiciary Committees.

Proposed approaches to the undocumented alien problem have tended to include some combination and variation of similar elements. These have been measures basically aimed at enhancing enforcement, including sanctions against the employment of illegal migrants, and increased funds and manpower for INS border and interior enforcement; measures designed to legalize the status of some portion of the aliens already here illegally, referred to as amnesty, registry, and adjustment of status; and provisions for the future legal channeling of the migrant flow, through an expanded temporary alien worker program, or increasing the number of immigrant visas available and/or changing the criteria for their distribution. The latter option is discussed in section III, dealing with immigration goals.

B. ENFORCEMENT AND AMNESTY

Background readings on enforcement proposals include selections from 96th Congress House and Senate Judiciary reports regarding appropriations for INS for fiscal year 1981. Arguments for and against Federal employer sanctions are included in several of the articles dealing with the impact of illegal migration. Piore and Cornelius argue against such sanctions, and Fogel argues in favor of them. Employer sanctions also were prominently featured in the past legislative proposals included above.

One of the major objections which has been raised against employer sanctions in the past was the difficulty the employer would allegedly have in determining whether a person is in fact legally entitled to accept employment, and the related alleged danger of discrimination against people of foreign appearance, particularly Hispanics. Accordingly, there has been increasing interest in the adoption of some kind of work card, including using the social security card for this purpose. An Executive Order issued by President Franklin Roosevelt in 1943 requiring that the Social Security number be used exclusively when any Federal agency "finds it advisable to establish a new system of permanent account numbers pertaining to individual persons" is included. It is arguable that this constitutes at least a precedent for the use of the Social Security card/number for worker identification purposes; such a use has been strongly opposed by the Social Security Administration, the Department of Health and Human Services (HHS), and HHS Secretary Patricia Harris in her capacity as a member of the Select Commission on Immigration and Refugee Policy. The 1943 Executive Order is followed by an excerpt from the November 1976 Report of the Federal Advisory Committee on False Identification recommending against the adoption of a national identification document.

Legalizing the status of certain aliens illegally present in the United States, popularly referred to as "amnesty," is generally recommended in the articles on the impact of illegal migration, and related provisions were included in the major legislative proposals of the 95th Congress. The Canadian experience is reviewed in a monograph by David North entitled, "The Canadian Experience with Amnesty for Aliens: What the United States Can Learn," which is excerpted here. Arguments against amnesty for aliens, and specifically against those proposals presented in President Carter's August 1977 message, are excerpted from the *Congressional Digest's* "Controversy over Proposed Amnesty for Illegal Aliens: Pro and Con." (The pro arguments are not included here since the other discussions of amnesty in these readings are generally favorable.)

C. TEMPORARY WORKER PROGRAMS

Concern about the legal channeling of aliens seeking employment in the future has led to interest by some in an expanded temporary alien worker program. A proposal for a system of temporary worker migration visas by Wayne Cornelius is included, followed by a bill modeled in part on this proposal: S. 1427 (96th Congress), introduced by Senator Harrison Schmitt for himself, Senator S. I. Hayakawa, and Senator Barry Goldwater. H.R. 326 (96th Congress), introduced by Congressman Hamilton Fish, the ranking minority member of the House Judiciary Subcommittee on Immigration, Refugees, and International Law, and a member of the Select Commission on Immigration and Refugee Policy, is also included, accompanied by a discussion by Congressman Fish of the need for similar legislation introduced in the 95th Congress. Unlike the Senate bill, which would create a new nonimmigrant visa category as the basis of an expanded temporary worker program, Congressman Fish's bill is aimed at expediting the administration of the existing "H-2" provision, the basis for the current admission of nonimmigrant temporary workers petitioned for by U.S. employers. Arguments in favor of an expanded temporary alien worker program are also presented in a number of articles dealing with the impact of illegal migration including those by Wachter, Piore, and Cornelius.

An increase in the admission of temporary alien workers through an expansion of the H-2 program or by any other means was strongly opposed by Eli Ginzberg, the Chairman of the National Commission for Manpower Policy. His recommendations are presented in a letter to the Secretary of Labor in response to a request that the National Commission for Manpower Policy look into the H-2 program, and in the summary of a seminar on Immigration and Employment Policies held by that Commission, both of which are included.

Precedents for a large scale temporary worker program exist in the form of the European guestworker programs and the U.S.-Mexican bracero program which lasted from 1942-1964. In "Guestworkers: Lessons from Western Europe," Philip Martin and Mark Miller review the postwar guestworker programs of France, Switzerland, and Germany, and come to generally negative conclusions about the desirability of such a program for the United States.

Historical material on the bracero program, under which Mexicans entered the United States temporarily for agricultural work, is also included. "The United States, Mexico, and the Wetbacks, 1942-1947" by Otey Scruggs reviews the early years of the program and concludes that it exacerbated the illegal migration problem of the day. The legislative and administrative history of the program from 1947-1964 is summarized in the excerpt from *Congress and the Nation, 1945-1964.* Finally, a June 1963 letter is included from the Mexican Ambassador protesting on behalf of the Government of Mexico what appeared to be the imminent demise of the bracero program: the program was extended for an additional year and a half, until the end of 1964. A principal argument in favor of the program advanced by the Mexican Ambassador was its alleged success in stemming the illegal traffic of the past, and the probability that this traffic would recur if the program were ended.

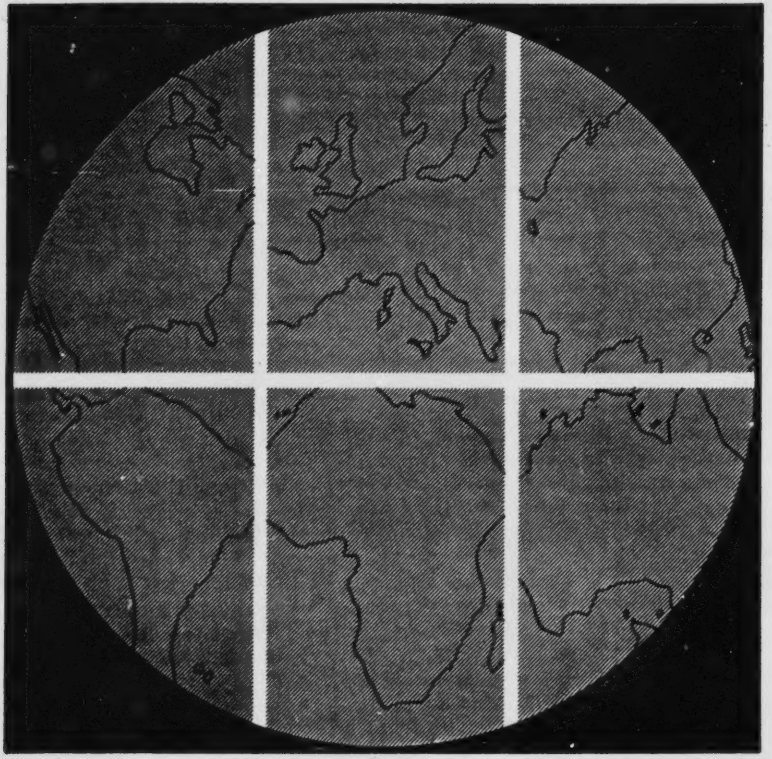
A. PAST PROPOSALS

11.

PRELIMINARY REPORT

DOMESTIC COUNCIL COMMITTEE ON ILLEGAL ALIENS

DECEMBER 1976



CHAPTER VIII
CONCLUSIONS AND MAJOR RECOMMENDATIONS

In drawing conclusions and formulating recommendations, it is important to reemphasize the preliminary nature of this report. The illegal immigration phenomenon is complex and an interagency examination of this issue is a very recent development. The charge to the Domestic Council Committee was to develop a comprehensive approach to the issue. In furtherance of that goal, this report attempts to provide a clear statement of the issue in its broad terms, assess current information, and chart the process and tasks through which the executive branch of government should proceed as a result.

One clear theme of this report is that a dramatic lack of reliable information makes thorough analysis of illegal immigration impossible at this time. Thus the conclusions which the Committee has drawn are tentative and subject to revision. Nevertheless the Committee believes that certain judgments can and should be made in an effort to channel further inquiry in a productive fashion.

A. CONCLUSIONS

1. Illegal immigration is rooted in powerful social and economic forces endemic to both host and sending countries.

Historically Mexico has been and remains a major source of illegal entrants to the United States.

However illegal immigration today involves many nations and new migration streams. Sending countries are typically rapidly developing nations where rising expectations combined with population pressure have far surpassed the ability of economic growth, albeit substantial, to narrow significantly the income gap with the U.S. Thus pressure to emigrate is intense, and large numbers of people have already emigrated to the United States legally from source countries in accordance with the 1965 Amendments to the Immigration and Nationality Act (INA). These amendments markedly changed legal immigration to permit large numbers of Latin and Asian origin groups and to diminish numbers of Europeans who immigrate. Illegal immigration must be studied in the context of migration incentives and the law governing legal entry. United States employers seek foreign workers for many kinds of work. Thus economic opportunity and kinship and culture ties in the U.S. combine with migration pressures to create potent push-pull forces which the INA was not designed to check.

2. Illegal immigration is significant and growing.

Current estimates of the stock and flow of illegal aliens are educated guesses at best. Establishing these numbers in a credible fashion is important. Although sound numbers are not available, the relevant point for current policy purposes is that the illegal immigration phenomenon is significant and growing. Our immigration policy, as promulgated under the INA, is ineffective. Our official commitment is to an exclusionary policy founded in history and domestic political considerations which allows approximately 400,000 foreign-born to take up permanent legal residence in this country per annum. The de facto situation is quite the opposite in that a combination of legal loopholes and incentives, enforcement inadequacies, and international push-pull forces have considerably eased limitations on immigration so that in practice we have a very open immigration system. Analysis of this combination of factors leads inevitably to the conclusion that a trend has been established which is likely to grow if present circumstances persist.

3. The major impact of illegal aliens at this time seems to be in the labor market. This impact is likely to extend over time to other areas as the process of settlement proceeds.

Illegal aliens compete effectively with native workers, particularly with the minimally skilled and under-employed, although the degree to which they actually displace native workers is unclear. These immigrants raise the income of owners of capital and land and of highly skilled workers and lower prices to consumers of goods and services they help produce. Thus certain legal residents gain and others, particularly those with few skills, lose from the presence of illegal aliens. However the unskilled labor which the illegal generally contributes in the early stages of migration later tends to be offset by the costs incurred in the latter stages of migration when new communities of families must be absorbed. This result occurs during settlement, the end-product of migration. Initially the migrant generally intends to emigrate only temporarily. However his aspirations, objectives and opportunities become attached to the host country so that he eventually remains,establishing or sending for family rather than returning.

4. The community-related implications of large numbers of illegal aliens are significant and merit government attention.

The ineffectiveness of the INA has helped to create communities concentrated in our largest urban centers whose existence depends on avoidance of law and authority. Breeding these conditions signals long-run negative social implications for ethnic Americans and for the ability of state and local units of government to function effectively. Aside from the question of economic impact, the ramifications of harboring large numbers of people in illegal status are undesirable and contribute to a breakdown in the institutions and systems upon which we depend for fair government.

5. Effective enforcement of the Immigration and Nationality Act must stress prevention above all other considerations.

It is vastly more desirable from both a policy and a resources standpoint to prevent entry of the illegal or screen out potential illegals before arrival than to locate and apprehend the illegal once he is in the U.S. This strategy is currently accepted but it will require more adequate resources for both the State Department and the Immigration and Naturalization Service, improved management and tactics, legislation, and greater cooperation among federal agencies with related enforcement responsibilities to be effective.

6. Effective enforcement is not enough. The illegal alien issue is ultimately an issue of immigration policy and will not be satisfactorily met until a thorough rethinking of our immigration policy is undertaken.

Who may enter this country for what periods of time under which circumstances are the questions we must, as a nation, answer. These questions in turn raise questions about employment, population, and other broad policy areas. The law must be revised to incorporate current and future realities not envisaged in the 1965 deliberations in which our present system was formulated. The executive branch must provide leadership and take an active role in the development of a better immigration policy. Serious study, widespread discussion, public education, interagency coordination, adequate resource allocation, policy analysis, planning, and cooperation with state and local levels of government are all needed.

B. MAJOR RECOMMENDATIONS

The recommendations set forth below do not preclude the more specific recommendations contained at the end of individual chapters. Specific chapter recommendations will presumably be implemented as part of the overall follow-up to this report by the Committee in accordance with the major recommendations below. The Committee does not believe any single element among its recommendations can solve the illegal alien problem. It does believe that the cumulative effect of implementing the recommendations which follow will be to slow the flow of illegal aliens significantly and to take major strides toward the development of a more effective immigration policy.

1. The issue of illegal immigration merits priority attention and requires Cabinet leadership. Actions to be taken cross many bureaucratic and agency lines and will require continued coordination and direction at the highest level.

2. The executive branch should aggressively pursue the enactment of legislation which relates directly to the illegal alien question and which the executive branch has supported in the past. Such legislative actions include:

   (a) penalties for employers who knowingly hire aliens not authorized to work;

   (b) application of the preference system and foreign state limitations to Western Hemisphere immigration in a manner similar to that regulating Eastern Hemisphere immigration;[47/]

   (c) thorough revision of the labor certification provisions of the current law so that immigrants admitted for employment fall within prescribed quotas and individual certifications are eliminated;

[47/] P.L. 94-571, signed on October 20, 1976, contains these provisions. This report was written and approved prior to that action.

(d) advancement of the eligibility date for establishing a record of admission for lawful permanent residence from June 30, 1948 to July 1, 1968; and

(e) increased penalties for persons who smuggle or facilitate illegal immigration.

3. The Committee should evaluate the current H-2 or temporary worker program authorized by the INA to determine if it is adequate, both from an administrative and statutory standpoint, to meet the legitimate needs of employers for temporary foreign workers. It should further assess the United States experience with the bracero program and the experiences of other nations with guest worker programs. An expanded, government to government foreign worker program should not be sought at this time. However, means of improving the government's responsiveness to employers under current law should be developed if necessary.

4. The agencies administering the INA -- INS and the Department of State -- should receive high priority in the allocation of resources directed at prevention of and screening for illegal entries, management and operational upgrading, and inter-Departmental coordination.

5. The Committee is concerned about the large number of illegal aliens already in the United States. The

Committee believes that massive deportation is both inhumane and impractical. It is expected that the enactment of the legislation described in recommendation #2 would permit some illegal aliens to adjust their status and cause many others to decide to leave the United States. In addition, the Committee should evaluate and develop other policy approaches toward those illegal aliens currently in the country.

6. The Department of State should undertake serious, high-priority exchanges, in addition to those underway with Mexico, with governments of the major illegal alien sending countries on the illegal migration issue, visa controls, and U.S. domestic pressures and activity surrounding the illegal alien. U.S. foreign aid and other efforts toward less developed nations should be encouraged, but with greater emphasis on factors that would reduce the pressures that encourage migration, e.g., population planning, rural economic development and labor intensive programs.

7. The Committee and the cognizant federal agencies should initiate and support a broad based research program to determine the nature and scope of various immigration related problems. This must include research within government agencies as well as through contracting with outside individuals and institutions, involvement of other levels of government and consultation with a wide variety of experts in many disciplines. Relevant economic,

sociological, demographic and labor market data are needed to adequately examine existing policies and update them.

8. The Committee should initiate a thorough reexamination of the basic precepts and operations of current immigration policy with the goal of developing proposals and systems which are based on information developed through careful study and research and widespread discussion among affected interest groups and the general public.

12.

94th Congress } HOUSE OF REPRESENTATIVES { Report
1st Session } { No. 94–506

AMENDING THE IMMIGRATION AND NATIONALITY ACT, AND FOR OTHER PURPOSES

September 24, 1975.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. Eilberg, from the Committee on the Judiciary,
submitted the following

REPORT

together with

ADDITIONAL, SUPPLEMENTAL, AND DISSENTING VIEWS

[To accompany H.R. 8713]

Analysis of Major Provisions of the Bill

ADJUSTMENT OF STATUS—WESTERN HEMISPHERE NATIVES

Section 1 of this bill amends Section 245 of the Immigration and Nationality Act, which now authorizes Eastern Hemisphere natives—currently eligible to immigrate—to adjust their status from nonimmigrants to that of permanent resident aliens without leaving the United States to secure an immigrant visa.

First of all, aliens (other than immediate relatives) who accept unauthorized employment prior to filing their adjustment application would be ineligible for adjustment of status. The Committee believes that this provision would deter many nonimmigrants from violating the conditions of their admission by obtaining unauthorized employment. Secondly, Section 1 would also disqualify from adjustment aliens who have been admitted in transit without visa. A Justice Department regulation presently prescribes such ineligibility and by the validity of this regulation was upheld by the Court of Appeals for the 2d Circuit in *Mak* v. *INS*, 435 F. 2d. 728 (1970). Therefore, this provision would merely confirm existing administrative procedures.

However, the primary purpose of section 1 is to restore adjustment of status eligibility to Western Hemisphere aliens. The present disqualification, enacted in 1965, has created many hardships and often leads to unnecessary expense by requiring aliens to return to their country of origin to obtain an immigrant visa from a U.S. consular official. This provision would remove this inconsistency and would provide equal treatment to all individuals regardless of their place of birth.

PENALTY STRUCTURE

Section 2 of H.R. 8713 repeals the proviso in Section 274 of the Immigration and Nationality Act which provides that normal employment practices shall not be deemed to constitute the harboring of illegal aliens—an offense presently punishable by a fine of $2,000 or a fine of imprisonment for five years. In addition, section 2 of the bill establishes an elaborate three-step procedure for imposing sanctions on employers and agents of employers who knowingly employ aliens illegally in the United States. These penalties also attach to any person who for a fee knowingly refers an illegal alien for employment.

A. Citation

The three-step penalty structure would commence with the service of a citation by the Attorney General on an employer who is found to have employed an illegal alien. This citation would issue upon evidence or information which the Attorney General deems persuasive and the employer is provided an informal opportunity to respond to and rebut any evidence or information in the possession of the Attorney General. The Committee expects the Attorney General to issue regulations and guidelines including specific examples as to what he would consider "persuasive evidence or information".

Although "guilty knowledge" is not required during the initial citation stage, the Committee does not intend a citation to be issued to employers who have made reasonable, responsible and bona fide efforts to determine the citizenship or alien status of his employees. The Committee wishes to emphasize that the authority provided in the citation stage is discretionary and that in the exercise of his discretion, the Attorney General is expected to consider what inquiries were made or what other actions were taken by an employer in an effort to determine the citizenship or alien status of his employees or prospective employees.

The Committee sought to avoid requiring actual knowledge of the employee's illegal status as a prerequisite to the issuance of a citation, since the imposition of such a requirement at this preliminary stage would impose an unreasonable and unnecessary burden upon the Attorney General. This is particularly true because issuance of a citation to an employer has no immediate legal or detrimental effect. The Committee is of the opinion that a citation should serve only as a warning to an employer; and the legislation specifically provides that it shall merely contain a "notification that the alien's employment is not authorized and a warning of the penalties and injunctive remedy" provided in the legislation.

The bill also authorizes judicial review in the appropriate district court of any citation served by the Attorney General and review must be sought within sixty days from the date of issuance of the citation.

B. Civil Penalty

If within two years after receipt of a citation, an employer "knowingly" hires an illegal alien, the Attorney General is required to initiate proceedings to assess a civil penalty of not more than $500 for each alien employed in violation of this bill. Such proceedings shall be conducted in accordance with the requirements of the Administrative Procedures Act (5 USC § 554). This would insure that persons against whom a civil penalty has been assessed would be provided with: an opportunity for a full agency hearing; timely notice of such hearing; responsive pleading, if necessary; and an opportunity to submit evidence on his behalf. Furthermore, in fixing the time and place for such hearing, the convenience and necessity of the parties shall be considered and the individual conducting such hearing shall not be engaged in the investigative or prosecuting functions of INS. Presumably, such hearings will be conducted by an Immigration Judge, and the Committee has been assured by the Department of Justice that the Board of Immigration Appeals will be authorized to consider appeals from his decision. In the event an employer is dissatisfied with the decision of the Immigration Judge and/or the decision of the Board of Immigration Appeals he would obtain judicial review in a suit by the Attorney General to collect the civil fine in a U.S. District Court.

C. Criminal Penalty

A violation subsequent to the assessment of a civil penalty which has become final would expose the offending party to a fine of not more than $1,000 and/or imprisonment for not more than one year for each alien in respect to whom a violation occurs.

It should be emphasized that the legislation imposes no direct obligations or affirmative requirements upon an employer. Instead, this section prohibits the "knowing" employment of illegal aliens, and it is the Committee's belief that by and large most employers will desist from hiring illegal aliens when it is known that civil and criminal penalties will attach to such activity. There is no requirement in this legislation that employers make inquiries as to the eligibility of prospective employees to work in the United States. However, it is anticipated that responsible employers will make every effort to avoid the sanctions of this legislation and will make reasonable inquiries as to the citizenship or alien status of each and everyone of their employees.

Many witnesses indicated that requiring employers to *ascertain* the citizenship or alien status of their employees would be burdensome and extremely difficult in view of the complexity of the Immigration and Nationality Act and would transfer law enforcement functions to the private sector. In addition, other witnesses stressed that requiring employers to obtain and verify documentation submitted by current or prospective employees would work hardships on U.S. citizens who may have difficulty in establishing their citizenship.

The Committee rejected these approaches believing that such a requirement may have far reaching implications and may be a step in the direction of a national identification or work permit system.

It is expected, however, that INS will make every effort to inform employers that an individual can document his U.S. citizenship by submitting both primary and secondary evidence of that citizenship. The following indicia of U.S. citizenship are currently accepted by INS for that purpose: official birth records; baptismal certificates; family bible entries; school records; census records; records of hospitals; and passports.

In addition, all permanent resident aliens are in possession of an Alien Registration Receipt card (I-151), and this is primary evidence that the alien has been lawfully admitted for permanent residence and is eligible to work in the United States. Likewise, any nonimmigrant for whom work is authorized is also in possession of a document issued by INS indicating this authority.

INJUNCTIVE REMEDY

In addition to imposing civil and criminal penalties, H.R. 8713 also grants U.S. district courts jurisdiction to enjoin employers from hiring illegal aliens and authorizes the Attorney General to bring such actions.

This provision is designed to strengthen the legislation, and improve INS' effectiveness in dealing with repeat offenders. Experience has demonstrated that many employers continue to hire illegal aliens even after INS has visited their business and located illegal aliens, notwithstanding attempts by INS to discourage this practice.

The AFL-CIO strongly supports injunctive remedies and believes that they are "necessary in order to provide effective enforcement." During the hearings, such a provision also received the support of the Department of Justice and the National Congress of Hispanic-American Citizens.

The Committee is of the opinion that this injunctive remedy as a supplement to the penalties in the legislation will prove to be a quick and effective enforcement tool. It is intended that this remedy be available at any time (i.e., it would not be necessary to commence the three step procedure prior to seeking an injunction in cases involving aggravated violations—such as the use of illegal aliens as strikebreakers).

NATIONAL ORIGINS EMPLOYMENT DISCRIMINATION

It has been suggested that this legislation would cause employers to discriminate on the basis of national origin.

The contention was made that employers faced with the possibility of criminal penalties will refuse to hire or discharge individuals with a foreign accent or a Spanish surname.

First, it should be emphasized that only the "knowing" employment of illegal aliens is made unlawful. In addition, the Committee has adopted a graduated, three-step procedure for imposing sanctions on employers of illegal aliens; thereby insuring conscientious and responsible employers that they will not be subject to civil and criminal penalties in the first instance.

Furthermore, it should be noted that Title VII of the Civil Rights Act of 1964 (43 U.S.C. Sec. 2000e-2 currently prohibits employment discrimination based on national origin. The Supreme Court discussed this provision at some length in *Espinoza* v. *Farah Manufacturing Co.*, 414 U.S. 86 (1973) and stated that "certainly it would be unlawful for an employer to discriminate against aliens because of race, color, religion, or national origin—i.e., by hiring aliens of Anglo-Saxon background but refusing to hire those of Mexican or Spanish ancestry."

It is clear from this decision and regulations which have been promulgated by the EEOC subsequent to this decision that any outright refusal by an employer to hire, as well as the wholesale dismissal of, individuals because of their foreign appearance or ethnic background would contravene the provisions of Title VII.

Nevertheless, in order to respond to the allegations that employment discrimination would result from the enactment of H.R. 8713, the Committee has included a provision which specifically authorizes the Attorney General to bring civil actions in the appropriate district court when he has reasonable cause to believe that an employer has engaged in employment discrimination based on national origin. The Committee recognizes that the median spread of time required for the resolution of any EEOC charge from receipt to final disposition is thirty-two months, and the current backlog as of March 1975 exceeds 100,000 cases.[4] Consequently, section 3 of this bill should be reviewed as an interim measure which will provide aggrieved parties with a meaningful and immediate remedy until EEOC has substantially reduced its current backlog or until the Congress has had an opportunity to review the adequacy of federal efforts to prevent employment discrimination.

It is the expectation of this Committee that H.R. 8713 be implemented in a manner which prevents job discrimination against ethnic and minority groups, and the Committee intends to closely scrutinize the administration of this section of H.R. 8713 by the Attorney General. Since illegal aliens compete most directly with the unskilled and the low-skilled, it is believed that the benefits which will accrue to ethnic and minority groups under this legislation will far outweigh the potentiality of employment discrimination based on national origin that some have indicated may flow from this legislation. Moreover, the Committee expects the Attorney General to fully inform employers as to the various provisions contained in H.R. 8713 and to explain to them their respective responsibilities under this legislation and Title VII of the Civil Rights Act of 1964.

ADJUSTMENTS OF STATUS—ILLEGAL ALIENS

Several witnesses during the Ninety-fourth Congress hearings expressed concern that this legislation would result in the deportation of many illegal aliens who have resided in the United States for long periods of time or who have established family and community ties while in this country. These witnesses, including the U.S. Catholic Conference, the National Congress of Hispanic Americans, and the AFL-CIO suggested various legislative programs to provide some form of equitable relief to these aliens.

The Committee, after carefully considering all the suggestions which were made, has adopted a provision which provides relief to those who have developed substantial equities while residing in the United States but at the same time does not seriously disadvantage those intending immigrants who have patiently awaited the issuance of a visa in their native country.

One of the reasons for the large number of illegal aliens from the Western Hemisphere is the difficulties encountered by such aliens in lawfully immigrating to the United States. In fact, there is currently a 28 month backlog for natives of the Western Hemisphere who are eligible to immigrate and at the same time there is no preference system for such entry. This Committee processed and the House approved legislation (H.R. 981) in the last Congress which would eliminate these inequities. The bill was not enacted into law and the Committee will give it priority consideration in this Congress.

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[4] "The Federal Civil Rights Enforcement Effort—1974, Volume V to Eliminate Employment Discrimination," A Report of the United States Commission on Civil Rights, July 1975, p. 529.

It is felt that section 4 of this bill coupled with the subsequent enactment of H.R. 981 is a humane, reasonable, and realistic approach to the problems confronting both illegal aliens and intending immigrants from the Western Hemisphere.

Consequently, section 4 of this bill enables an illegal alien to acquire the status of a permanent resident alien if he has been continuously physically present in the United States since June 30, 1968 and: (1) is the close relative of a U.S. citizen or permanent resident alien; or (2) his deportation would result in unusual hardship. In other words, in order to be eligible for relief under this section an alien must meet the continuous physical presence requirements set forth in this section. In addition to satisfying the residence requirement, such alien must fall within one of the specified relationships or, in the alternative, he must demonstrate to the satisfaction of the Attorney General that unusual hardship would result in the event of his deportation. The relief provided is totally within the discretion of the Attorney General.

While it will be necessary for the Attorney General to exercise his discretion on a case-by-case basis, the Committee expects the Attorney General to promulgate, as expeditiously as possible, regulations setting forth general standards to guide him in the use of his authority under this section. The alien is also required to be admissible to the United States under all the provisions of Section 212(a) of the Immigration and Nationality Act except that he is not required to obtain a labor certification (212(a)(14)) or be in possession of proper documentation (212(a)(20)).

With respect to determining hardship under Section 4 of this bill the Attorney General is expected to apply similar criteria to that which is currently utilized in granting suspension of deportation and consider the following facts and circumstances, among others: age of subject; family ties in U.S. and abroad; length of residence in the United States; condition of health; conditions in the country to which the alien is returnable—economic and political; financial status—business and occupation; the possibility of other means of adjustment of status; whether of special assistance to the U.S. or community; immigration history; position in the community.

In order to avoid the situation where an alien must resort to public assistance because his illegal status has caused the termination of his current employment and to protect employers of aliens who may be entitled to the equitable relief, the Committee adopted an amendment to authorize the employment of such an alien pending final action on his adjustment of status application. The numerical limitations set forth in the Immigration and Nationality Act shall not apply with respect to adjustments of status under this section.

This section specifically denies adjustment of status to any alien who ordered or participated in the persecution of any individual because of race, religion, national origin or political opinion.

The Committee has chosen the date of June 30, 1968 since on that date a numerical ceiling was imposed for the first time on immigration from the Western Hemisphere and as a result the opportunity for legal immigration for natives of that hemisphere was curtailed.

EFFECTIVE DATE

Section 8 of the bill provides that the legislation shall become effective on the first day of the first month after the expiration of 90 days following the enactment date.

Since the bill specifically prohibits the continued, as well as future, employment of illegal aliens, the delayed effective date accomplishes two basic objectives. First of all, it makes certain that only acts which occur after the date of enactment of the legislation are proscribed. In other words, if an employer continues to knowingly employ an illegal alien beyond the 90-day period, he will be subject to civil and criminal penalties of the bill. Secondly, the delayed effective date allows an employer sufficient time to replace those illegal aliens who are knowingly in his employ on the date of enactment.

INS AUTHORIZATION

For several years, the Committee has been deeply concerned by the inadequate funding of INS. The Committee believes that the lack of funds has greatly diminished the capacity of INS to properly and effectively administer the Immigration and Nationality Act.

This problem can be traced directly to the failure of the Department of Justice and OMB to place sufficient priority on the enforcement of our immigration law. This fact is clearly demonstrated by the following statistics:

IMMIGRATION AND NATURALIZATION SERVICE APPROPRIATIONS

	Fiscal year—			
	1973	1974	1975	1976
INS budget recommendation to Department of Justice	$150,324,000	$167,150,000	$210,062,000	$246,407,000
Department of Justice budget recommendation to OMB	142,467,000	157,774,000	198,500,000	220,982,000
Budget to Congress	129,000,000	139,698,000	180,400,000	208,744,000
Budget appropriated	129,[illegible],000	[1] [illegible]	175,[illegible]	Pending

[1] 1974 supplemental appropriation provided an additional $3,000,000.

More specifically, insufficient INS manpower, on occasion, has resulted in: curtailment of services to the public; release of apprehended illegal aliens; temporary suspension of enforcement activities; inadequate response to sensor alarms along the southwest border which indicate the surreptitious entry of illegal aliens; and failure to investigate and locate overstay visitors.

It is the position of the Committee that adequate funds must be provided to INS to enable that agency to better combat the illegal alien problem; and we are hopeful that the Department of Justice and OMB will present the Congress with more realistic budget requests for INS in the future.

In the Ninety-third Congress, the House Committee on Government Operations reviewed in detail the funding problem of INS and specifically recommended:

> The Committee on the Judiciary should consider the development of legislation to require annual or other periodic

> authorizations for programs of the Immigration and Naturalization Service to the end that legislative oversight will be maintained and adequate resources will be made available for control of illegal alien traffic.[5]

In addition to increased resources and an expanded enforcement effort, the Committee recognizes the need for an improvement in the methods and techniques employed by INS in controlling the illegal alien problem. This Committee for some time has stressed the need for: a counterfeit-proof alien registration receipt card (I–151); an improved nonimmigrant docket control system; and better controls over Mexican border crossing cards. These problem areas, as well as the general need for improvements in the management activities of INS, were discussed in another 1973 GAO report entitled "Need for Improvements in Management Activities of the Immigration and Naturalization Service". Some progress has been made during the last year and the Committee intends to closely monitor these matters in the future.

In order to maintain close oversight of INS with regard to both its funding and management problems, the Committee has included in H.R. 8713 a provision which eliminates the open-ended authorization of funds for INS. As a result of this provision, the Committee and the Congress will be required to aprove annual or periodic authorization bills for INS. In particular, the Subcommittee on Immigration, Citizenship and International Law will, by necessity, review the functions, programs, and activities of INS on a line-item basis.

This Committee firmly believes that this provision (section 9) will enable it to more fully and properly discharge its oversight responsibilities as required by the Legislative Reorganization Act of 1970 and the Committee Reform Amendments of 1974.

13.

JK 1800

95TH CONGRESS } HOUSE OF REPRESENTATIVES { DOCUMENT
1st Session } { No. 95-202

UNDOCUMENTED ALIENS

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

PROPOSING ACTIONS TO REDUCE THE FLOW OF UNDOCUMENTED ALIENS IN THIS COUNTRY AND TO REGULATE THE PRESENCE OF THOSE ALREADY HERE

AUGUST 4, 1977.—Message referred to the Committee of the Whole House on the State of the Union and ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE
89-011 WASHINGTON : 1977

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To the Congress of the United States:

I am proposing to Congress today a set of actions to help markedly reduce the increasing flow of undocumented aliens in this country and to regulate the presence of the millions of undocumented aliens already here

These proposed actions are based on the results of a thorough Cabinet-level study and on the groundwork which has been laid, since the beginning of the decade, by Congressmen Rodino and Eilberg and Senators Eastland and Kennedy. These actions will:

Make unlawful the hiring of undocumented aliens, with enforcement by the Justice Department against those employers who engage in a "pattern or practice" of such hiring. Penalties would be civil—injunctions and fines of $1,000 per undocumented alien hired. Criminal penalties could be imposed by the courts against employers violating injunctions. Moreover, employers, and others, receiving compensation for knowingly assisting an undocumented alien obtain or retain a job would also be subject to criminal penalties.

Increase significantly the enforcement of the Fair Labor Standards Act and the Federal Farm Labor Contractor Registration Act, targeted to areas where heavy undocumented alien hirings occur.

Adjust the immigration status of undocumented aliens who have resided in the United States continuously from before January 1, 1970, to the present and who apply with the Immigration and Naturalization Service (INS) for permanent resident alien status; create a new immigration category of temporary resident alien for undocumented aliens who have resided in the United States continuously prior to January 1, 1977; make no status change and enforce the immigration law against those undocumented aliens entering the United States after January 1, 1977.

Substantially increase resources available to control the Southern border, and other entry points, in order to prevent illegal immigration.

Promote continued cooperation with the governments which are major sources of undocumented aliens, in an effort to improve their economies and their controls over alien smuggling rings.

Each of these actions will play a distinct, but closely related, role in helping to solve one of our most complex domestic problems: In the last several years, millions of undocumented aliens have illegally immigrated to the United States. They have breached our nation's immigration laws, displaced many American citizens from jobs, and placed an increased financial burden on many states and local governments.

The set of actions I am proposing cannot solve this enormous problem overnight, but they will signal the beginning of an effective Federal response. My administration is strongly committed to aggressive and comprehensive steps toward resolving this problem, and I am therefore proposing the following actions:

2

EMPLOYER SANCTIONS

The principal attraction of the United States for undocumented aliens is economic—the opportunity to obtain a job paying considerably more than any available in their own countries. If that opportunity is severely restricted, I am convinced that far fewer aliens will attempt illegal entry.

I am therefore proposing that Congress make unlawful the hiring by any employer of any undocumented alien. This employment bar would be implemented in the following way:

Enforcement would be sought against those employers who engage in a "pattern or practice" of hiring undocumented aliens, with the Justice Department setting priorities for enforcement.

Penalties for violation of the employment bar would be both injunctive relief and stiff civil fines—a maximum of $1,000 for each undocumented alien hired by an employer. A violation of a court injunction would subject an employer to a potential criminal contempt citation and imprisonment.

An employer would be entitled to defend any charge of hiring an undocumented alien by proving that a prospective employee's documentation of legal residence, as designated by the Attorney General in regulations, was seen prior to employment.

The social security card would be designated as one of the authorized identification documents; and we will accelerate the steps already being taken to make certain that such cards are issued, as the law now mandates, only to legal residents. Those steps include requiring personal interviews of card applicants and making the cards more difficult to forge. But no steps would be taken to make the Social Security card, or any other card, a national identification document.

To further restrict job opportunities, criminal sanctions would be imposed on those persons who receive compensation for knowingly assisting an undocumented alien obtain or retain employment, or who knowingly contract with such persons for the employment of undocumented aliens. These sanctions are directed at the substantial number of individuals who broker jobs for undocumented aliens or act as agents for alien smugglers. It is not directed at those who inadvertently refer an undocumented alien to a job, such as an employment agency or a union hiring hall.

To make certain that all of these new sanctions are uniformly applied, they would pre-empt any existing State sanctions.

In addition to the creation of these new sanctions, efforts to increase enforcement of existing sanctions will be significantly increased. The Fair Labor Standards Act, which mandates payment of the minimum wage and provides other employee protections, would not only be strictly enforced, but its existing civil and criminal penalties would be sought much more frequently by the government. To date, the inability of the government to enforce fully this act, due in part to a lack of resources, has resulted in the hiring of undocumented aliens at subminimum wages, thereby often displacing American workers. Two hundred sixty new inspectors will be hired and targeted to areas of heavy undocumented alien employment. Similarly, the Federal Farm Labor Contractor Registration Act, which prohibits the recruiting and hiring of undocumented aliens for farm work, would be tightly enforced. The Departments of Justice and Labor will work closely in exchanging information developed in their separate enforcement activities.

While I believe that both the new and existing employer sanctions, and their strict enforcement, are required to control the employment of undocumented aliens, the possibility that these sanctions might lead employers to discriminate against Mexican-American citizens and legal residents, as well as other ethnic Americans, would be intolerable. The proposed employer sanctions have been designed, with their general reliance on civil penalties and "pattern or practice" enforcement, to minimize any cause for discrimination. However, to prevent any discriminatory hiring, the federal civil rights agencies will be charged with making much greater efforts to ensure that existing antidiscrimination laws are fully enforced.

BORDER ENFORCEMENT

The proposed employer sanctions will not, by themselves, be enough to stop the entry of undocumented aliens. Measures must also be taken to significantly increase existing border enforcement efforts. While our borders cannot realistically be made impenetrable to illegal entry, greater enforcement efforts clearly are possible, consistent with preserving both the longest open borders in the world and our humanitarian traditions.

I am proposing to take the following increased enforcement measures, most of which will require Congressional approval for the necessary additional resources:

Enforcement resources at the border will be increased substantially and will be reorganized to ensure greater effectiveness. The exact nature of the reorganization, as well as the amount of additional enforcement personnel, will be determined after the completion in September of our ongoing border enforcement studies. It is very likely, though, that a minimum of 2,000 additional enforcement personnel will be placed on the Mexican border.

INS will shift a significant number of enforcement personnel to border areas having the highest reported rates of undocumented alien entry.

An anti-smuggling task force will be established in order to seek ways to reduce the number and effectiveness of the smuggling rings which, by obtaining forged documents and providing transportation, systematically smuggle a substantial percentage of the undocumented aliens entering the country. The U.S. attorneys will be instructed to give high priority to prosecuting individuals involved in alien smuggling.

The State Department will increase its visa issuance resources abroad to insure that foreign citizens attempting to enter this country will be doing so within the requirements of the immigration laws.

Passage will be sought of pending legislation to impose criminal sanctions on those who knowingly use false information to obtain identifiers issued by our Government, or who knowingly use fraudulent Government documents to obtain legitimate Government documents.

The State Department will consult with countries which are the sources of significant numbers of undocumented aliens about cooperative border enforcement and anti-smuggling efforts.

COOPERATION WITH SOURCE COUNTRIES

The proposed employer sanctions and border enforcement will clearly discourage a significant percentage of those who would otherwise attempt to enter or remain in the United States illegally. However, as long as jobs are available here but not easily available in countries which have been the source of most undocumented aliens, many citizens of those countries will ignore whatever barriers to entry and employment we erect. An effective policy to control illegal immigration must include the development of a strong economy in each source country.

Unfortunately, this objective may be difficult to achieve within the near future. The economies of most of the source countries are still not sufficiently developed to produce, even with significant U.S. aid, enough jobs over the short term to match their rapidly growing workforce.

Over the longer-term, however, I believe that marked improvements in source countries' economies are achievable by their own efforts with support from the United States. I welcome the economic development efforts now being made by the dynamic and competent leaders of Mexico. To further efforts such as those, the United States is committed to helping source countries obtain assistance appropriate to their own economic needs. I will explore with source countries means of providing such assistance. In some cases this will mean bilateral or multilateral economic assistance. In others, it will involve technical assistance, encouragement of private financing and enhanced trade, or population programs.

ADJUSTMENT OF STATUS

The fact that there are millions of undocumented aliens already residing in this country presents one of the most difficult questions surrounding the aliens phenomenon. These aliens entered the United States illegally and have willfully remained here in violation of the immigration laws. On the other hand, many of them have been law-abiding residents who are looking for a new life and are productive members of their communities.

I have concluded that an adjustment of status is necessary to avoid having a permanent underclass of millions of persons who have not been and cannot practicably be deported, and who would continue living here in perpetual fear of immigration authorities, the local police, employers and neighbors. Their entire existence would continue to be predicated on staying outside the reach of government authorities and the law's protections.

I therefore recommend the following adjustments of status:

First, I propose that permanent resident alien status be granted to all documented aliens who have resided continuously in the United

States from before January 1, 1970, to the present. These aliens would have to apply for this status and provide normal documentary proof of continuous residency. If residency is maintained, U.S. citizenship could be sought five years after the granting of permanent status, as provided in existing immigration laws.

The permanent resident alien status would be granted through an update of the registry provisions of the Immigration and Nationality Act. The registry statute has been updated three times since 1929, with the last update in 1965, when permanent resident alien status was granted to those who had resided here prior to 1948.

Second, all undocumented aliens, including those (other than exchange and student visitors) with expired visas, who were residing in the United States on or before January 1, 1977, will be eligible for a temporary resident alien status for 5 years.

Those eligible would be granted the temporary status only after registering with INS; registration would be permitted solely during a 1-year period. Aliens granted temporary status would be entitled to reside legally in the United States for a 5-year period.

The purpose of granting a temporary status is to preserve a decision on the final status of these undocumented aliens, until much more precise information about their number, location, family size, and economic situation can be collected and reviewed. That information would be obtained through the registration process. A decision on their final status would be made sometime after the completion of the registration process and before the expiration of the 5-year period

Temporary resident aliens would not have the right to vote, to run for public office or to serve on juries; nor would they be entitled to bring members of their families into the United States. But they could leave and re-enter this country, and they could seek employment. under the same rules as permanent resident aliens.

Unlike permanent resident aliens, temporary resident aliens would be ineligible to receive such Federal social services as medicaid, food stamps, aid to families with dependent children, and supplemental security income. However, the allocation formulas for revenue sharing, which are based on population, would be adjusted to reflect the presence of temporary resident aliens. The adjustment would compensate states and local communities for the fact that some of these residents—undocumented aliens—are currently not included in the Census Bureau's population counts. That undercount deprives certain states and communities of Revenue Sharing funds which, if Census figures were completely accurate, would be received and used to defray certain expenses caused by the presence of undocumented aliens. Those receiving adjustments of status through the actions I am proposing would be included in the 1980 Census, so that the allocation charges would have to be made only through 1980.

Third, for those undocumented aliens who entered the United States after January 1, 1977, there would be no adjustment of status. The immigration laws would still be enforced against these undocumented aliens. Similarly, those undocumented aliens, who are eligible for adjustment of status, but do not apply, would continue to have the immigration laws enforced against them.

In addition, the INS would expedite its handling of the substantial backlog of adjustment of status applications from those aliens entitled to an adjustment under existing law.

Finally, those persons who would be eligible for an adjustment of status under these proposals must not be ineligible under other provisions of the immigration laws.

TEMPORARY FOREIGN WORKERS

As part of these efforts to control the problem of undocumented aliens, I am asking the Secretary of Labor to conduct, in consultation with the Congress and other interested parties, a comprehensive review of the current temporary foreign worker (H-2) certification program. I believe it is possible to structure this program so that it responds to the legitimate needs of both employees, by protecting domestic employment opportunities, and of employers, by providing a needed workforce. However, I am not considering the reintroduction of a bracero-type program for the importation of temporary workers.

IMMIGRATION POLICY

Our present immigration statutes are in need of a comprehensive review. I am therefore directing the Secretary of State, the Attorney General, and the Secretary of Labor to begin a comprehensive interagency study of our existing immigration laws and policies.

In the interim, I am supporting pending legislation to increase the annual limitation on legal Mexican and Canadian immigration to a total of 50,000, allocated between them according to demand. This legislation will help provide an incentive to legal immigration.

I urge the Congress to consider promptly, and to pass, the legislation I will submit containing the proposals described in this Message.

JIMMY CARTER.

THE WHITE HOUSE, *August 4, 1977.*

14.

COMPARATIVE ANALYSIS OF H.R. 1663 AND H.R. 9531/S. 2252

Provision	Existing Law	H.R. 1663 (Mr. Eilberg)	H.R. 9531 (Mr. Rodino)/ S. 2252 (Sen. Eastland, et al.), for the Administration
Penalty Provisions for Employment of Aliens	None; provides that normal employment practices shall not be deemed to constitute harboring, an offense punishable by $2,000 and/or 5 years imprisonment for each alien involved (Sec. 274)	Deletes the proviso in existing law that normal employment practices shall not be deemed to constitute harboring (Sec. 1)	Does not delete the proviso that normal employment practices shall not be deemed to constitute harboring
Definition of offense		Makes unlawful the knowing employment, continued employment, or referral for employment of an illegal alien by an employer or his agent, or by any person who for a fee refers an alien for employment (Sec. 1)	Makes unlawful the employment of illegal aliens. Proof by the employer that he saw documentary evidence of an alien's eligibility to work raises a rebuttable presumption of nonviolation (Sec. 5) (Separate penalties and procedures are provided for the knowing facilitation for gain of the unauthorized employment of aliens; see below)
Injunctive relief		Grants the U.S. district courts jurisdiction to enjoin the knowing employment, continued employment, or referral for employment of illegal aliens not authorized to work (Sec. 1)	Grants the U.S. district courts jurisdiction to enjoin the employment of illegal aliens (Sec. 5)

From U.S. Library of Congress, Congressional Research Service. The "Alien Adjustment and Employment Act of 1977": Background, Summary and Pro and Con Analysis by Joyce Vialet. Report No. 77-256 Ed. December 13, 1977.

Provision	Existing Law	H.R. 1663	H.R. 9531/S. 2252
Penalties		Establishes a three-step procedure of administrative, civil, and criminal sanctions:	Provides that violation is subject to a civil penalty of not more than $1000 for each alien involved (Sec. 5)
		(a) citation for knowing or unknowing employment, continued employment, or referral for employment of illegal aliens; (b) for knowing employment, continued employment, or referral for employment within two years after citation, and after a hearing before an immigration officer, civil penalty of not more than $500 for each alien involved; (c) persons convicted of subsequent violations shall be guilty of a misdemeanor punishable by a fine of not more than $1000 and/or imprisonment of not more than one year for each alien involved (Sec. 1)	Requires that the Attorney General, upon determination that cause exists to believe the employer has engaged in a pattern or practice of violations, bring actions for both civil penalty and injunctive relief in the appropriate U.S. district courts (Sec. 5)
Penalties for facilitation of employment		Same as employment; see above	Separate penalties for knowingly and for gain assisting an alien to obtain or retain unauthorized employment or entering into a contractual arrangement to facilitate such employment. Either would be a felony, punishable by a fine of up to $2000 and/or imprisonment not exceeding 5 years for each alien (Sec. 5)

Provision	Existing Law	H.R. 1663	H.R. 9531/S. 2252
Preemption of State and local law		No comparable provision	Expressly provides that the provisions of this section are intended to preempt State or local laws providing civil or criminal sanctions for the employment or facilitation of employment of aliens not authorized to work in the U.S. (Sec. 5)
Adjustment to Permanent Resident Status (Registry/"Amnesty")	Authorizes the Attorney General, at his discretion, to create a record of lawful admission for certain aliens who have had their residence continuously in the U.S. since prior to June 30, 1948. Aliens must not be inadmissible under the provisions of 212(a) relating to "criminals, procurers and other immoral persons, subversives, violators of the narcotics laws or smugglers of aliens," must be of good moral character, and must not be ineligible for citizenship (Sec. 249)	Does not amend Sec. 249, the registry provision. Authorizes the Attorney General, at his discretion, to adjust the status of certain aliens who have been continuously physically present in the U.S. since June 30, 1968, and who are either close relatives of U.S. citizens or permanent resident aliens, or whose departure would result in unusual hardship. Aliens must be admissible as immigrants under the provisions of the Immigration and Nationality Act, with the exception of the labor certification requirement and certain documentary requirements, and must apply within one year after the effective date of this bill (Sec. 3)	Amends existing law. Changes the cutoff date for eligibility for relief under this provision to Jan. 1, 1970; deletes the requirements relating to good moral character and eligibility for citizenship; makes ineligible aliens who persecuted others (Sec. 2)

Provision	Existing Law	H.R. 1663	H.R. 9531/S. 2252
Adjustment to Temporary Resident Status	No comparable provision	No comparable provision	Does not amend existing law. Authorizes the Attorney General at his discretion, to permit eligible aliens to reside in the U.S. for 5 years after the effective date of this Act. Aliens must have resided continuously in the U.S. since Jan. 1, 1977, not be inadmissible on aggravated grounds under Sec. 212(a) of the INA, not have been in-status nonimmigrants as of Jan. 1, 1977 or out-of-status students or exchange visitors, and not have persecuted others. Such aliens may accept employment and are not eligible for specified public assistance programs (Sec. 4)
Anti-discrimination	No comparable provision in Immigration and Nationality Act (See 42 U.S.C. 2000e-5)	Authorizes the Attorney General to bring civil actions against employers who are believed to discriminate on the basis of national origin (Sec. 2)	No comparable provision
Disclosure of Aliens Illegally Receiving Assistance under the Social Security Act	Requires the Social Security Administration, upon request, to notify the Justice Department of "available information" on the identity and location of aliens in the U.S. (Sec. 209(c))	Adds a new provision requiring HEW to disclose to Justice the name and address of any alien, including any alien unlawfully in the U.S., who is receiving assistance under specified titles of the Social Security Act for which he is not eligible (Sec. 4)	No comparable provision

Provision	Existing Law	H.R. 1663	H.R. 9531/S. 2252
Falsifying of Alien Documentation	Imposes criminal penalties for knowingly falsifying certain immigration documents or for the knowing use of such falsified documents (18 U.S.C. 1546)	Amends 18 U.S.C. 1546 to make it also explicitly applicable to border crossing cards, alien registration receipt cards, or other entry documents (Sec. 5)	No comparable provision
Grounds for Deportation	Makes deportable an alien who becomes a public charge within five years after entry and for reasons which existed prior to entry (Sec. 241(a)(8))	Further stipulates that becoming a public charge is grounds for deportation regardless of whether the alien is legally liable for repayment (Sec. 8)	No comparable provision
Effective Date		The first day of the first month 90 days after enactment (Sec. 7)	Sixty days after enactment (Sec. 6)

15.

STATEMENT OF POSITION REGARDING THE ADMINISTRATION'S UNDOCUMENTED ALIEN LEGISLATIVE PROPOSAL (1977)

MEXICAN AMERICAN LEGAL DEFENSE EDUCATIONAL FUND
1028 CONNECTICUT AVENUE, SUITE 716 / WASHINGTON, D.C. 20036 / (202) 659-5166

SUMMARY

Enclosed for your information and review is a copy of MALDEF's "Statement of Position Regarding the Administration's Undocumented Aliens Legislative Proposal." For the past several weeks, MALDEF has been in the process of closely analyzing President Carter's Message of August 4, 1977, which proposed actions both to reduce the flow of undocumented aliens into this country and to regulate the presence of such persons already here. The enclosed statement is a detailed presentation of MALDEF's views concerning the legislative action proposed by the Administration.

In general, we are greatly disappointed by the legislative package outlined in the President's Message. We feel that the need for the proposed legislation was not well considered, and that the legislation itself is poorly conceived.

Specifically, we think that three of its major shortcomings deserve particular mention. The first relates to the factual void in which the Administration's proposal is made; the second and third deal respectively with the employer sanction and change of alien status elements of the proposal.

With regard to the first point, we oppose the Administration's proposal because it is not premised on any reliable factual data or analysis regarding the impact of undocumented aliens upon our society. In our view, the accumulation of such

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NATIONAL OFFICE
[illegible]
[illegible] GENERAL COUNSEL
[illegible]
[illegible] CA [illegible]
[illegible]

REGIONAL OFFICES

[illegible] AVENUE
[illegible]
[illegible]

[illegible] BLVD., SUITE [illegible]
LOS ANGELES, CALIFORNIA [illegible]
[illegible]

[illegible] BLDG.
[illegible]
SAN ANTONIO, TEXAS [illegible]
(512) [illegible]

1028 CONNECTICUT AVENUE
SUITE 716
WASHINGTON, D.C. 20036
(202) [illegible]

CONTRIBUTIONS ARE DEDUCTIBLE FOR U.S. INCOME TAX PURPOSES

data and its analysis are a necessary predicate to the rational formulation of any undocumented alien proposal, and informed consideration of that proposal by Congress. Because this required first step did not precede the drafting of the Administration's proposal, we feel it is fundamentally deficient.

As to the second point, we oppose the employer sanction element of the Administration's proposal because we feel that its implementation will inevitably lead to employment discrimination against Mexican Americans. If enacted, some employers would be overzealous in enforcing their understanding of the provision, and would refuse to hire anyone distinguished by their skin color or accent as possibly being of foreign origin. Other employers, to avoid any chance of being brought under governmental scrutiny for violating the provision, would do the same. And some employers, who harbor prejudices against Mexican Americans and other ethnic Americans, would use the provision as justification for their discriminatory hiring practices. To avoid the possibility of spawning such employment discrimination against Mexican Americans, MALDEF is unalterably opposed to the Administration's employer sanction proposal.

Finally, MALDEF considers the change of alien status element of the Administration's proposal to be fundamentally objectionable. By offering permanent resident status only to those undocumented persons who have been continuously residing in this country prior to 1970, the proposal wrongfully denies such status to persons who have built up substantial equities in our society. Persons not continuously resident in the United States prior to 1970 (but who have been resident since on or before January 1, 1977) are offered instead only a five-year nondeportable status in which they would be afforded only few of the constitutional and statutory rights guaranteed permanent residents and citizens, and would in effect be cast into an institutionalized subclass of legally resident alien laborers. We are opposed to creation of the nondeportable class, and believe that permanent resident status should be afforded to all persons who have resided continuously in the United States since an appropriate, substantially more recent date than January 1, 1970 -- for example, the Bicentennial date of July 4, 1976 or January 1, 1977.

The above summary gives you a broad overview of MALDEF's views on the Administration's undocumented alien proposal. We refer you to our "Statement of Position" for a significantly more detailed articulation of our views. We urge you to review the statement closely, and we solicit both your comments, and hopefully, your support.

(iii)

16.

B. ENFORCEMENT AND AMNESTY

Calendar No. 838

96th Congress } SENATE { Report
2d Session } { No. 96-786

DEPARTMENT OF JUSTICE AUTHORIZATION ACT FISCAL YEAR 1981

REPORT

OF THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

[To accompany S. 2377]

May 20 (legislative day, January 3), 1980.—Ordered to be printed

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U.S. GOVERNMENT PRINTING OFFICE
63-280 O WASHINGTON : 1980

IMMIGRATION AND NATURALIZATION SERVICE

The Immigration and Naturalization Service (INS) has primary responsibility for administering the Immigration and Nationality Act of 1952, as amended. Under this act, INS has a dual mission: public service (inspecting aliens who wish to enter the United States, adjudicating requests of aliens for benefits under the law, examining applicants for citizenship) and enforcement (guarding against illegal entry, investigating, apprehending and deporting undocumented aliens.) The committee recognizes that these are difficult responsibilities. Each year, more and more foreign nationals enter the United States, both legally and illegally. Normal flow numbers are formidable. It is estimated, for example, that in fiscal year 1981, over 292 million persons will seek some type of legal admission to the United States. In addition, INS is frequently called upon to deal with crises, illustrated most recently by the Cambodian, Iranian, Haitian, and Cuban situations.

The committee is aware of the complex issues with which INS must deal and the competing demands made upon this agency. Over the past 3 fiscal years, the committee has consistently sought to increase the authorization for INS. It has supported funds for computerization, for increased service to the public, and for additional personnel for the entire range of INS activities.

It has become increasingly clear, however, that despite increased resources INS is still unable to meet its responsibilities. The committee is, therefore, urging more reliance on long-term management solutions to INS problems. Until the committee can be satisfied that additional resources will be allocated effectively and absorbed efficiently, it will retain this position.

Currently, according to an internal audit report of the Department of Justice, the Immigration and Naturalization Service can account with certainty, by budget activity, for only one out of $7 that it has been appropriated. That level of and budgetary accountability is not sufficient to persuade the committee that increased resources would be allocated for the activities for which they were authorized. Accordingly, the committee has authorized the March request of the administration ($247,700,000) for the Immigration and Naturalization Service.

The committee suggests that one cause of INS' fiscal confusion is that INS lacks many of the management tools necessary for an effective and efficient operation. The financial system that insures control and accountability is weak and unused. Planning, program development, and evaluation capabilities need to be considerably strengthened. Moreover, the agency collects voluminous amounts of trivial information; the reliability of the data base is questionable, as is its relevance to program activities.

The committee suggests that INS rethink the role of the central office, as well as the types of skills required to accomplish that role. The committee suggests that the office should be staffed more to provide a management and policy direction and compliance capacity than to serve as an extension of day to day field operations.

Moreover, the committee notes that the Immigration and Naturalization Service has a considerable portion of its personnel located in Washington, and not out in the field, while increased resources in the field are certainly suggested. The committee suggests that reallocation of personnel may solve some of the problems facing the Immigration and Naturalization Service.

Additionally, the committee suggests that, while INS line operations, namely, the Border Patrol and Inspections function, must have sufficient resources to perform their functions, there are inefficiencies in these operations that can be eliminated. INS continues to expend much of its resources for "uncontrollable" overtime. Such overtime could be reduced or eliminated by better scheduling of inspections officers to correspond with the heavy volume of traffic at ports-of-entry and by improved deployment of border patrol officers. Consideration should also be given to realigning the manning of the northern border, including perhaps the closure of some low-volume ports-of-entry and the expansion of preinspection stations, where practicable.

The committee also recommends that INS analyze its application process with the goal of simplifying it, including the elimination and consolidation of forms. There is a general recognition that the enormous volume of paper which the agency processes now threatens to overwhelm it. Increasingly, it appears that INS cannot act on a timely basis; actions of vital importance are delayed for an unconscionable time. The applications are too complex, and too much information is requested. The committee recommends that INS define its information requirements so that it does not collect more information than it uses. Unnecessary collection is costly, burdensome for applicants, and adds to the processing time and, consequently, the backlog.

The committee encourages INS' initial steps toward greater automation of its functions, clearly the only long-term solution. INS is far behind in the use of modern automation techniques and is now paying the price for such delay. It is hoped, however, that while planning and development of data processing are underway, steps will also be taken to improve the existing situation. The huge backlog of pending cases simply must be eliminated. The committee suggests that INS propose to the committee priorities among the various applications and other documents now processed so that ultimately there can be agreement on the most important.

Further, the committee is concerned that INS has been and remains unable to insure the equitable treatment of everyone who comes into contact with the Service. INS must aggressively seek out and investigate instances of corruption, civil rights violations and serious misconduct. Insuring the integrity of the Service's personnel must be of highest priority.

Finally, the committee is troubled by the low morale among INS employees and believes strongly that the morale problem has been aggravated by the administration's avoidable failure to nominate a Commissioner. While low morale may be a function of the ambiguity of INS' mission, it most probably is also a function of the quality of the support services, such as training, INS provides its employees. To the extent that low morale is a result of controllable INS policies, programs and procedures, the committee recommends that INS develop a program to improve that morale. Such a program should clarify precisely employee responsibilities. Ultimately, it is hoped that improving morale will decrease the levels of tension between INS and its clients.

In sum, INS must take immediate steps to: (1) set priorities among its many competing demands; (2) eliminate waste and inefficiency throughout the Service; (3) apply modern management tools and techniques to eliminate backlogs; (4) introduce timely processing; (5) insure equitable treatment for all applicants and undocumented aliens; and, (6) improve the working conditions for its employees.

Because of these management problems, the committee finds it impossible to increase the Immigration and Naturalization Service authorization at this time. The committee awaits submission of the management analysis called for in last year's authorization bill which should provide INS with a 5-year plan for improvement of its operations.[11] Upon receipt of that analysis, the committee will work with INS to authorize whatever resources are required to make INS an effective agency of Government.

17.

96th Congress } HOUSE OF REPRESENTATIVES { Rept. 96-
2d Session } { 873 Part 1

DEPARTMENT OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEAR 1981

April 14, 1980.—Ordered to be printed

Mr. Rodino, from the Committee on the Judiciary, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 6846]

Immigration and Naturalization Service

The responsibility for administering the Immigration and Nationality Act of 1952, as amended, (8 U.S.C. 1011 et seq.) rests with the Immigration and Naturalization Service of the Department of Justice and the Bureau of Consular Affairs of the Department of State. The Immigration and Naturalization Service administers and enforces the provisions of that act which relate to admitting, excluding, deporting, adjudicating the status of, and naturalizing aliens. The Border Patrol of INS patrols the U.S. borders between land ports of entry and is responsible for apprehending and preventing the smuggling of undocumented aliens within the border area.

During its consideration of the Department of Justice authorization legislation last year, the committee identified several management deficiencees and operational problems within INS. In an effort to resolve these problems, the committee recommended additional funds (ultimately approved by the Congress) for the following purposes: (1) automating certain INS operations; (2) increasing Border Patrol personnel; (3) conducting an independent management analysis; (4) creating an Office of Special Investigator for INS; and (5) investigating and prosecuting deportation and denaturalization cases involving alledged Nazi war criminals residing in the United States.

In the course of its 3 days of oversight hearings this year, the Subcommittee on Immigration, Refugees, and International Law was disturbed to learn that minimal progress had been made in addressing these problem areas and in implementing many of the committee's earlier recommendations. Likewise, the subcommittee was concerned that the administration's authorization request for INS for fiscal year 1981 was deficient in several respects and failed to recognize the resource and personnel requirements of the Service. In the committee's judgment, the INS authorization submission reflects the continued lack of appreciation which the Office of Management and Budget (OMB) has for INS mandated mission. The committee substitute incorporates several amendments designed to resolve specific problems identified during the subcommittee's oversight hearings.

The committee wishes to make it clear that the increased authorization levels for certain INS programs and activities have been recommended because of the committee's deep concern that the budget levels requested by the administration would prevent that agency from discharging its statutory mandate in a proper and effective manner. The committee's action on the INS portion of the authorization legislation is discussed below:

INSPECTIONS

The committee amendment increases funding for the Immigration and Naturalization Service inspection activity by $6.2 million and provides for 91 additional inspectors for the examination of alien arrivals at ports of entry. The increased compliment authorized by the committee plus the 15 positions provided for in the budget for fiscal year 1981 represent a total of 106 inspectors, the number included in the Department of Justice budget submission to OMB.

Favorable currency exchange rates to the dollar, deregulation of airlines, and tourist promotional programs have increased the number of foreign visitors coming to the United States. The Air Transport Association reports that air passenger arrivals from foreign countries have increased by over 110 percent between 1975 and 1979 reaching some 28 million travelers in 1979. This trend is expected to continue in the future at an accelerated rate.

The Service continues to receive complaints from airport management relative to long waiting lines, congested inspection areas, and in some cases, the holding of foreign passengers on the aircraft for varying periods of time as they wait to be brought into terminals for inspection.

To compensate for the serious lack of manpower and funding resources, INS has adopted various measures seeking to alleviate these passenger inconveniences, but these initiatives have done relatively little to provide an adequate solution to the problem.

The committee is hopeful that the critically needed inspection force, authorized in the committee amendment, will reduce delays and inconveniences at international airports and the committee urges INS to explore alternative administrative methods (that is, expanded pre-clearance, one-stop inspection, citizen-bypass, employment of "other than permanent" personnel) to facilitate foreign travel to this country.

SPECIAL INVESTIGATOR

The Special Investigator was established at the initiative of the committee in the fiscal year 1980 authorization bill to respond to widespread allegations of fraud, corruption, and mismanagement within the Immigration Service. The committee believed then, as it does now, that it was essential to create a strong internal review mechanism, both to assure the integrity of the Service, and to independently review and make recommendations on Service operations. The Office of Special Investigator at INS was patterned after the Inspector General offices in 12 separate Federal agencies created by the Inspector General Act of 1978 (Public Law 95-452). The legislation mandated the appointment of a Special Investigator by the Attorney General, and also required the appointment of an Assistant Special Investigator for Auditing and an Assistant Special Investigator for investigations.

The committee is at a loss to explain why the Attorney General still has not appointed the Special Investigator despite the passage of several months since the 1980 authorization bill was signed into law. Although members of the committee have repeatedly raised this issue with the Attorney General, and he has both privately and in testimony before the committee given assurances that an appointment was imminent, the position remains vacant. Recent newspaper articles and the committee's own hearings have clearly demonstrated that the problems within the Service, which the Special Investigator was created to address, continue to be serious and pervasive, and that there is a critical need for prompt action to curtail abuses and improprieties in the agency. In view of the severity of the allegations and mounting public criticism of INS, the committee urges the Attorney General immediately to appoint a Special Investigator.

At the present time the functions of the Assistant Special Investigator for Auditing and the Assistant Special Investigator for Investigations are being performed by the Office of Field Inspections and Audit and the Office of Professional Responsibility at INS, respectively. The Department's 1981 submission contemplated a budget of $700,000 for each of these two functions plus $100,000 for the Special Investigator, two secretaries, and certain administrative costs, for a total office budget of $1.5 million.

The $700,000 budget for the Office of Professional Responsibility—which will, the committee assumes, become the Office of the Assistant Special Investigator for Investigations—provided funding for 12 positions. In testimony before the committee, however, the new head of the Office of Professional Responsibility stated that a staff of 12 was "absolutely not" capable of responding to complaints of fraud and corruption within INS. He felt, in fact, that a staff of 97 was needed.

The Commissioner of INS, in his testimony, stated that the Service had prepared a supplemental budget request for 28 new investigative positions (bringing the total to 40) and $1.5 million. Although this request has not been formally submitted to Congress, the committee amendment adopts the $1.5 million figure and raises the total authorization for the Office of the Special Investigator to $3 million, $2.2 million of which is to be allocated to the Office of Professional Responsibility/Assistant Special Investigator for Investigations.

It is the committee's hope and expectation that, in addition to appointing immediately a Special Investigator, the Attorney General will provide for the orderly transition of the Office of Professional Responsibility and Office of Field Inspections and Audit into the new office.

BORDER PATROL

This committee amendment increases the funding authorization for the Immigration and Naturalization Service by $16.173 million for purposes of increasing Border Patrol personnel by 311 positions. In effect, the committee restores the 199 positions eliminated in the fiscal year 1981 budget request and adds 112 positions which were recommended by the Department of Justice to OMB.

This action by the committee is consistent with the position it has maintained for the past 2 years. In fact, in its consideration of the authorization legislation for fiscal years 1979 and 1980, the committee called for substantial increases in Border Patrol manpower and funding. In fiscal year 1979, upon the initiative of this committee, the Congress authorized and appropriated funds for 293 new Border Patrol positions. These positions were never filled. In its budget submission to the Department of Justice for fiscal year 1980, the Immigration and Naturalization Service requested an additional 1,204 positions for the Border Patrol. In submitting the budget request to OMB, the Department of Justice reduced it substantially (providing only for an additional 202 positions). OMB reduced this budget request by cutting the 293 unfilled positions authorized by Congress for fiscal year 1979.

A committee amendment to last year's authorization bill resulted in an increased authorization and appropriation for the Immigration and Naturalization Service of $14.406 million for purposes of increasing Border Patrol personnel by 495 positions (in effect, rescinding the cut of 293 positions by OMB and adding 202 positions originally approved by the Department of Justice). In spite of this action by the Congress, OMB only allowed the filling of 301 positions of the 495 authorized and appropriated in fiscal year 1980. The committee, in the instant legislation, seeks to rectify this arbitrary decision by OMB.

Numerous justifications have been advanced by the Department of Justice and OMB for their actions regarding the personnel needs of the Border Patrol including:

> The inability to identify the magnitude of the illegal alien population, the failure of Congress to enact employer sanction legislation, judicial constraints on INS operations, public opinion about undocumented aliens, and the nature of the Southern Border which make current immigration statutes very difficult to enforce. The Department of Justice also believes that large budget increases for enforcement would be unproductive until the Select Commission on Immigration and Refugee Policy issues its report which should assist in developing agreement on statutory changes to remove incentives for illegal immigrants.

The committee has consistently maintained that the most reasonable and humane administrative solution to the undocumented alien problem is to prevent their entry, rather than attempt to locate and deport them once they have entered the United States.

Michael Walsh, U.S. attorney for the Southern District of California, in testimony before the Subcommittee on Immigration, Refugees, and International Law stated that the problem in the Chula Vista sector, which accounts for one-half of all border apprenhensions, is "obviously one of manpower" which leads to "a lot of pessimism, a lot of resignation, and a lot of frustration." He further testified:

> There is a yo-yo effect of inconsistent signals that come out of what is perceived to be the "Federal Government"—on the one hand you have the Congress passing, OMB taking away; and the explanation of taking away frequently being the problem. That's really not the sort of explanation that's calculated to inspire people to great new heights of efficiency.

The committee must conclude that the underfunding of the Border Patrol has also resulted in: (1) increased levels of violence and brutality along the border; (2) increased danger to the Border Patrol personnel and aliens; and (3) increased possibilities of violations of civil rights.

The committee urges that the Immigration and Naturalization Service review, and revise where warranted, training curricula for the Border Patrol to insure that proper procedures are followed in apprehending and detaining aliens, with particular attention placed on continued "on-the-job" training in the use of firearms and "deadly force."

DETENTION STANDARDS

At the present time there are no comprehensive standards for detention facilities operated by INS. Instead, policies and procedures for the five facilities (located at New York, N.Y.; Port Isabel, Tex.; El Paso, Tex.; El Centro, Calif.; and, as of March 4, 1980, Miami, Fla.) have evolved in a piecemeal and haphazard manner.

Furthermore, conditions in the INS detention facility in Brooklyn (New York City Service Processing Center) have been criticized by several concerned individuals and organizations for some time. The committee recognizes that INS facilities are utilized primarily for short-term detention and that the vast majority of aliens are held less than 48 hours. Nevertheless, the committee believes that short-term detainees (who are being held for deportation, not for criminal violations) are entitled to a humane and sanitary environment, with adequate food, lodging, medical care and recreational activities.

In order to insure critically needed improvements in INS detention facilities, policies, and programs, the committee amendment requires the Attorney General to develop comprehensive detention standards for INS and to conduct an evaluation, based on such standards within 1 year from the date of enactment of this legislation. The committee expects that such standards will be developed in close consultation with the Bureau of Prisons and the American Correctional Association.

18.

EXECUTIVE ORDER 9397

NUMBERING SYSTEM FOR FEDERAL ACCOUNTS RELATING TO INDIVIDUAL PERSONS

WHEREAS certain Federal agencies from time to time require in the administration of their activities a system of numerical identification of accounts of individual persons; and

WHEREAS some seventy million persons have heretofore been assigned account numbers pursuant to the Social Security Act; and

WHEREAS a large percentage of Federal employees have already been assigned account numbers pursuant to the Social Security Act; and

WHEREAS it is desirable in the interest of economy and orderly administration that the Federal Government move towards the use of a single, unduplicated numerical identification system of accounts and avoid the unnecessary establishment of additional systems:

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States, it is hereby ordered as follows:

1. Hereafter any Federal department, establishment, or agency shall, whenever the head thereof finds it advisable to establish a new system of permanent account numbers pertaining to individual persons, utilize exclusively the Social Security Act account numbers assigned pursuant to Title 26, section 402.502 of the 1940 Supplement to the Code of Federal Regulations[1] and pursuant to paragraph 2 of this order.

2. The Social Security Board shall provide for the assignment of an account number to each person who is required by any Federal agency to have such a number but who has not previously been assigned such number by the Board. The Board may accomplish this purpose by (a) assigning such numbers to individual persons, (b) assigning blocks of numbers to Federal agencies for reassignment to individual persons, or (c) making such other arrangements for the assignment of numbers as it may deem appropriate.

3. The Social Security Board shall furnish, upon request of any Federal agency utilizing the numerical identification system of accounts provided for in this order, the account number pertaining to any person with whom such agency has an account or the name and other identifying data pertaining to any account number of any such person.

4. The Social Security Board and each Federal agency shall maintain the confidential character of information relating to individual persons obtained pursuant to the provisions of this order.

5. There shall be transferred to the Social Security Board, from time to time, such amounts as the Director of the Bureau of the Budget shall determine to be required for reimbursement by any Federal agency for the services rendered by the Board pursuant to the provisions of this order.

6. This order shall be published in the FEDERAL REGISTER.

FRANKLIN D ROOSEVELT

THE WHITE HOUSE,
November 22, 1943.

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[1] 3 CFR Cum. Supp.

19.

THE CRIMINAL USE OF FALSE IDENTIFICATION

A Summary Report on the Nature, Scope, and Impact of False ID Use in the United States with Recommendations to Combat the Problem

NOVEMBER 1976

The Report of the Federal Advisory Committee on False Identification

**UNITED STATES DEPARTMENT
OF JUSTICE**

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402 - Price $6.30
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SECTION 7

RECOMMENDATIONS APPLIED TO MAJOR PROBLEM AREAS

In our summary of the scope of the national problem of false identification, we identified several areas in which the use of false IDs has significant impact. These major problem areas include drug smuggling, illegal immigration, fugitives from justice, fraud against business, and fraud against government. In many cases, false ID use in such crimes begins with the abuse of a birth certificate, then a state driver's license, which are then used as "breeder" documents to obtain other IDs. In this section we present the recommendations of the FACFI with respect to Federal and state legislation, the issuance of birth certificates and driver's licenses, as well as recommendations with respect to each of the major problem areas. At the end of each recommendation, when applicable, we have given the designated number of the committee's preliminary proposal in that area (see Figure 6 and Appendix B).

Before these recommendations are considered, however, we wish to capsule our thinking on a broader, more all-encompassing solution — adoption of a national identification document. We discuss the concept of a national ID in order to present the reasons why such a document (or system) is not recommended by the FACFI as a solution to false identification problems.

REJECTION OF A NATIONAL IDENTIFICATION DOCUMENT

The concept of a uniform personal identification document, to be issued and secured by Federal or state government, has occasionally been proposed as a sweeping solution to the problems of false identification. National IDs are in fact used by a number of nations with democratic traditions as well as those under other forms of government. (See "A Survey of Foreign National Systems for Personal Identification," Appendix C4.) The FACFI considered it necessary and advisable to study the national ID concept as carefully and rationally as possible in order to illuminate the advantages and problems inherent in such an approach.

Three different approaches to a system of uniform personal identification were described in preliminary proposals submitted for evaluation by FACFI members. (Listed in Appendix B as Preliminary Proposals 54, 3, and 11.) One such approach proposed a federally-issued document designed specifically for personal identification within the U.S. This document would be available to citizens on a voluntary basis and would incorporate application procedures and security features similar to those used in the U.S. passport. The second suggestion envisioned a complete national identification system in which citizens would be registered at birth. This proposal included an automated verification system — a data base containing only identity information — that could be accessed only by the registered individual to verify his identity to government agencies. The third proposal suggested the use of present state driver's licenses (and "non-driver" state IDs) as recognized and required personal identification. Application for such a document would be required of all citizens at age 16. Safeguards against counterfeiting, alteration, and use by imposters would have to be included in all such state documents.

Arguments can be brought to bear in favor of and against all these proposals. Arguments in favor of a single standardized type of ID include beliefs that:

- Such a document could be more easily recognized, controlled and protected against abuse.

- Document systems that include everybody would thereby be "foolproof".

- Government has an obligation to provide a reliable means of personal identification for public and private transactions among its citizens.

Arguments against a standardized national ID included beliefs that such documentation is in opposition to American tradition and would represent an invasion of personal privacy, and that data required for citizen identification could be abused by government or private interests.

It is certain that any new system designed to verify and store identity information on over 200 million people would be extremely expensive and require a major national effort. It is highly probable that proposals for such a system would be opposed politically. If such a system were implemented despite these difficulties, it would be subject to defeat by imposters or counterfeiters taking advantage of careless inspection of documents or through corruption of officials. Occasional errors would also occur in such a system that could adversely affect innocent people. Organized crime would take advantage of any national ID system because of the presumption of validity surrounding such a large system. Criminals could reap benefits far greater than they obtain under the current multi-faceted system of identification.

The FACFI therefore strongly opposes any new type of state, or local government-issued ID intended to supersede existing documents. In short, FACFI opposes any so called "National ID card."

The FACFI instead recommends that the security of existing state document systems be increased, particularly for breeder documents such as the birth certificate and the driver's license. Security must be increased both in the application phase (during which documents are issued) and in the use phase (when the documents are used).

Thus, the goals of FACFI's recommended Federal actions are to insure the increased security and privacy of existing state identification documents in state, interstate, and Federal transactions, and to insure swift prosecution of criminals who obtain and use false IDs. The following recommendations are designed to accomplish these goals.

RIGHT TO PRIVACY

The FACFI finds that the criminal use of false identification often invades personal privacy; that innocent citizens are victimized when their good names and credit are used in criminal transactions; and that the protection of personal privacy is an essential right, fully consistent with sound law enforcement efforts to reduce false identification crimes.

The FACFI therefore recommends that individual privacy rights be given the fullest consideration in the formulation and implementation of the following legislative and administrative proposals to counter the criminal use of false identification.

FEDERAL LEGISLATION

The FACFI finds that although there are approximately 350 Federal statutes relating to false identification, false application and related subjects (see Appendix E3), Federal laws are ineffective in deterring false identification crimes because:

- Most identification documents are issued and regulated solely by the states; Federal statutes only come into play when the criminal applies for a federally-issued document such as a passport.
- The Federal government does not collect and maintain information to verify a person's identity; only the states have that information.
- There are loopholes in some of the Federal statutes regulating specific documents such as the Social Security card.
- Even where Federal statutes are specific and well drafted, enforcement and prosecution are often given low priority.
- In some cases, penalties for false statements on applications are sufficient. Other statutes require only revocation of licenses.

The FACFI therefore recommends that:

a. S. 2131 (see Section 10) Introduced in the 94th Congress be enacted. S.2131 would close most existing loopholes in Federal legislation dealing with false identification.

b. Federal false identification statutes be enforced with renewed vigor by prosecutors, and that judges be made aware of the importance of false identification crimes so that sentences may more accurately reflect the seriousness of these crimes.

STATE LEGISLATION

The FACFI finds that the primary thrust of state statutes dealing with false identification is prohibitive, not preventive, and are ineffective because:

- In most states there is no comprehensive law against establishing a fraudulent identity.
- State laws governing the issuance of certified copies of birth certificates and access to such records do not adequately protect the public's right to privacy because certified copies are freely (though unknowingly) handed to criminals.
- The problem is national in scope, yet states are powerless to protect any but their own identification documents.
- The wide variety in document format and authenticating seals encourages the passing of counterfeit documents.
- Laws regulating specific documents, such as the birth certificate, are not comprehensive enough to allow effective enforcement.

- Many documents that can be used for identification purposes or to obtain other documents are not regulated at all.

- In most states, a citizen has the common law right to change his or her name without any formal legal proceedings; in these states it is more difficult for prosecutors to prove fraudulent intent to violate false ID laws.

The FACFI therefore recommends that:

a. States enact Model State Legislation proposed by the Committee entitled The Identity Protection Act. (See Section 9)

b. States enact the most recent amendments to the Model State Vital Statistics Act that are designed to protect the integrity of the birth certificate issuing systems. These amendments also upgrade criminal penalties for false identification crimes. (See Section 9 and Appendix C1)

c. State educational programs be established to facilitate implementation of the Model Identity Protection Act and the Model State Vital Statistics Act and to assist officials in improving methods of document fraud detection.

BIRTH CERTIFICATE

The FACFI finds that certified copies of birth certificates have frequently been abused by imposters and counterfeiters because:

- Unsigned requests by mail for such documents are usually honored.

- The birth certificates of deceased persons are not usually so designated.
- Records of deaths and births in many states are open for "browsing" by persons seeking false identification.
- Minimum standards are not available for issuance security and document security of birth certifications.
- Many vital records offices are autonomous, which results in a wide variety of the formats, seals, and safeguards provided for certifications.
- Information on the abuse of birth certificates is often not given to the proper state authorities.
- Abuse of birth certificates is not sufficiently covered by legislation at either the state or Federal level.

The FACFI therefore recommends that:

a. Fraudulent application be discouraged by use of state-issued standard application forms requiring the applicant's signature, justification for request, and items of personal history not generally available to imposters. (Solution #58)

b. A system be implemented for intrastate and interstate matching of birth and death records, such that the fact of death is noted on the birth certificates of all persons aged 55 years or less at the time of death. (Solution #5)

c. State laws to protect individual privacy by limiting public access to birth and death records be enacted in all states lacking such legislation. (Solution #1)

d. Minimum standards for identification of applicants for birth certification, and for security of certified copies against theft, alteration and counterfeiting be drafted for adoption by state legislatures. (Solution #2)

e. Federal agencies that require personal identification in application for privileges or benefits accept as primary evidence of age and place of birth only those U.S. birth certifications issued by a state or state-controlled records office. (Solution #47)

f. Formal notification of the abuse of a birth certification be given by state and Federal law enforcement agencies to the appropriate state registry officials. The information exchange might be facilitated through the establishment of a national clearinghouse for false ID information. (Solution #10)

g. Wherever practical, requests for birth certificates be retained by the issuing office to assist in the detection and tracing of fraudulent requests. (Solution #7)

h. Appropriate state and Federal legislation be enacted to prohibit the possession, sale, and transfer of birth certifications for the purpose of establishing a false identification. (Solution #4)

DRIVER'S LICENSE

The FACFI finds that state driver's licenses (and "non-driver" state ID or "age-of-majority" cards) are frequently abused by counterfeiting, imposture, or fraudulent application because:

- They are used as personal ID for commercial transactions and dealings with government agencies although this use was not intended by issuing authorities.
- The security of issuance procedures and of the document itself varies widely among the states.
- State documents are not sufficiently protected by Federal legislation against interstate abuse.

The FACFI therefore recommends that:

a. The state-issued driver's license (or state-issued ID) be recognized under law as the primary form of personal ID for use in commerce and in general transactions between individuals and government. (Solution #11 Revised)

b. Guidelines be drafted by the Federal government providing minimum standards for identification of applicants for original, replacement, or interstate exchange of state IDs, and for security of state IDs against counterfeiting, alteration, and use by imposters. (Solution #11 Revised)

c. Voluntary compliance by all states with these guidelines be encouraged by appropriate awards and/or sanctions. (Solution #11 Revised)

d. An analysis and implementation plan for improvement in the security of state ID systems (see Appendices D1 through D3) be developed by the Law Enforcement Assistance Administration (LEAA) for consideration by the states. (Solution #12)

e. Federal legislation be enacted to prohibit counterfeiting in any state of personal IDs issued by any other state, and to prohibit use of the mails to assist fraudulent application for state IDs. (Solution #4)

f. Federal legislation be enacted to allow all states to use the Social Security number on their driver's licenses in other records.

DRUG SMUGGLING

The FACFI finds that smuggling of narcotics and other dangerous drugs by criminal organizations is aided materially be extensive use of false U.S. and foreign passports and other false documents.

The FACFI therefore recommends that:

a. Birth certificates and state-issued IDs, as the primary documents used in U.S. passport application procedures, be secured in accordance with FACFI recommendations.

b. Federal agencies concerned with the activities of drug smugglers (including the Immigration and Naturalization Service, Drug Enforcement Administration, Customs Service, Passport Office, and Visa Office) provide coordinated training programs for the detection of false IDs used by smugglers and communicate frequently with each other and state and local authorities on the observed patterns of such false ID use. (Solution #49)

c. Interpol be encouraged to coordinate international law enforcement efforts in the detection of passport and other document fraud.

ILLEGAL IMMIGRATION

The FACFI finds that illegal aliens frequently use false IDs such as stolen or counterfeit immigration documents and border crossing cards, and U.S. birth certificates and voter registration cards obtained under false pretenses to enter and remain in the United States. By obtaining Social Security accounts, they are able to secure employment to which they are not entitled, made easier because knowing employment of illegal aliens is not prohibited under Federal law.

The FACFI therefore recommends that:

a. The Immigration and Naturalization Service (INS) be provided with sufficient funds to develop and implement an improved system for registration of legal aliens that will resist attempts at forgery, counterfeiting, and use of INS documents by imposters. (Solution #20)

b. Birth certificates and secondary evidence of U.S. citizenship be secured in accordance with the foregoing FACFI recommendations.

c. Identification and citizenship of applicants for new Social Security accounts be verified by stricter evidentiary requirements or other appropriate means. (Solution #43)

d. Federal legislation be enacted to counteract knowing employment of illegal aliens. (Solution #17)

FUGITIVES FROM JUSTICE

The FACFI finds that dangerous fugitives are able to avoid apprehension through the use of false identification, and that, when arrested, they may be released before their identity and criminal history is confirmed.

The FACFI therefore recommends that:

a. State and Federal document systems be protected from abuse by fugitives through enactment of FACFI recommendations for birth certificates and driver's licenses.

b. Laws be enacted requiring verification of the identity of all persons arrested, prior to their release on bond. (Solution #22)

c. To meet such identification requirements without endangering arrestees' rights, appropriate equipment be used for high-speed transmission of fingerprints and other identifying data between local law enforcement offices and state identification bureaus. (Solution #22)

FRAUD AGAINST BUSINESS

The FACFI finds that American business is subjected to billion-dollar losses each year from false identification fraud through forgery and counterfeiting of personal and corporate checks, impersonation based on false or stolen credit cards, and negotiation of lost or stolen securities.

The FACFI therefore recommends that:

a. The business community incorporate into its operations measures to prevent false identification crimes; preserve evidence of such crimes; prosecute those who commit them; train employees in preventative measures; and assist the public in understanding the need for these measures.

b. The business community make use of improved technological safeguards against false ID fraud. (The general characteristics of some of these safeguards are described in the FACFI Staff Paper, "Automated Identification Technology," Appendix C2.) (Solution #24)

c. The business community participate in the increasing development and use of electronic funds transfer systems, which have the potential of reducing false ID fraud by reducing the amount of negotiable paper in circulation. The potential for privacy abuses and significant false ID fraud via electronic manipulation must be addressed in the design of such systems. (These systems and their relationship to false ID fraud are described in the FACFI Staff Paper, "Electronic Funds Transfer Systems (EETS) - An overview," Appendix C1.) (Solution #27) d . The security of driver's licenses and other state IDs, which are widely used in commercial transactions, be improved through implementation of FACFI recommendations.

FRAUD AGAINST GOVERNMENT

The FACFI finds that government programs such as public assistance, food stamps, and Social Security are subjected to large annual losses through false identification fraud, and that such fraud results principally from the use of false IDs at application for benefits, in welfare ID cards, and in the cashing of stolen benefit and payroll checks.

The FACFI therefore recommends that:

a. The Federal government draft stricter uniform standards for the identification of applicants for federally-supported or cost-shared public assistance programs. (See Section 9 for this and following recommendations; Solution #36)

b. Mailing of welfare and payroll checks to individuals be superseded by mailing or direct deposit to banks and thrift institutions, to the extent that such depositing is beneficial and practical. (Solution #25)

c. The identity of applicants for new Social Security accounts be verified by stricter evidentiary requirements or other appropriate means. (Solution #43) And that the Social Security card be made resistent to counterfeitng, alteration and forgery.

d. Cooperative Federal programs be instituted for the training of welfare and Social Security employees in techniques for detection and reporting of the use of false identification. (Solution #49)

e. The security of birth certificates and driver's licenses, which are frequently used in application for government payments, be improved through implementation of FACFI recommendations.

OTHER RECOMMENDATIONS

The FACFI finds that because false identification crimes are often not detected until long after the crime has been committed, many government agencies and commercial establishments are being defrauded without their even being aware of the fact.

The FACFI therefore recommends that Federal, state and local agencies and the commercial sector develop increased awareness of the nature of false identification crimes, compile statistics on those crimes that are committed within their organizations, and affirmatively seek methods of preventing the commission of such crimes both in the application state, when fraudulent applications are made, and in the use stage, when false documents are used.

The FACFI finds that there is an almost total lack of meaningful statistics concerning false identification crimes; there is great reluctance by organizations to reveal these crimes even when they are discovered; and that such failure to expose the criminal use of false identification has contributed to the proliferation and success of this criminal technique.

The FACFI therefore recommends that Federal, state and local law enforcement agencies together with commercial firms establish a statistical base line by which to measure the increase or decrease in false identification crimes and that other data on false identification be compiled, including the type of crime, modus operandi, and a profile of the user and the victim. The FACFI also recommends that the FBI gather statistics relating to false identification crimes and publish them in Uniform Crime Reports. Such statistical base lines can then be used to measure the effectiveness of the countermeasures recommended by the FACFI as they are being implemented.

The FACFI finds that a study of the means by which Federal, state and local agencies obtain and use undercover documents for law enforcement and intelligence purposes is outside of the charter of the Committee and thus has not been explored; the Committee notes, however, that some have questioned the adequacy of controls on obtaining and using such documents.

The FACFI therefore recommends that: (1) government agencies should not obtain or provide "alias identification" in violation of any local, state, or Federal laws; and (2) recommends that agencies review their laws, regulations and procedures for obtaining such credentials to insure that they are lawfully obtained and that their use is adequately controlled.

The FACFI finds it essential to obtain increased public recognition of the scope and impact of crime committed with the aid of false IDs and to solicit informed support of measures designed to reduce the use of false IDs in the United states.

The FACFI therefore recommends that the Department of Justice and all other concerned organizations encourage public support for the measures recommended by the FACFI. (Solution #46)

20.

WEP 2-26/WP 43

WORLD EMPLOYMENT PROGRAMME RESEARCH

Working Paper

MIGRATION FOR EMPLOYMENT PROJECT

THE CANADIAN EXPERIENCE WITH AMNESTY FOR ALIENS: WHAT THE UNITED STATES CAN LEARN

by

David S. North

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I. BACKGROUND

In any but the most Draconian immigration system there are bound to be aliens within a host nation whose presence has not been accepted in law by that nation; for the sake of simplicity, we will call those persons illegal aliens. The host nation has three choices it can make about those persons; it can:

- expel them,
- ignore them, or
- legalize the presence of some or all of them.

Again, for convenience, we term the third procedure amnesty.

The United States clearly has a large number of illegal aliens within its borders; and the Carter Administration has proposed a comprehensive approach to that population calling for, among other things, two levels of amnesty for some of the illegal aliens. With this in mind, we decided to examine the experience that the Canadian Government had earlier in this decade as they offered amnesty (on two different occasions) to groups of aliens in Canada. While there are remarkable differences between Canada and the U.S., there are remarkable similarities as well. What, if anything, can the U.S. learn from the Canadian experiment with amnesty?

Before describing what happened in Canada, however, it is useful to review briefly previous U.S. and Western European experience with amnesty generally, so as to put the Canadian story in an appropriate setting.

In American immigration history, amnesty has never played a major role, but now and then it has played a supporting part in the nation's immigration system, usually on a case-by-case basis for the more affluent of the illegal aliens, and, on one occasion, on a mass, (if partial) basis for a large number of aliens whose presence in the nation was desired by agri-business. The case-by-case amnesty programs (never termed as such) can be grouped into three segments:

- Legislative amnesty, created by the passage of private laws, which make an exception in the immigration law for a specific individual or family.
- Judicial amnesty, brought about on behalf of a person or persons who have retained legal counsel to appeal to the courts to legalize their presence.

- *Administrative amnesty*, worked through the Immigration and Naturalization Service (INS) processes; for years the most common rationale for granting this form of amnesty was the alien's ability to prove his continuous (albeit illegal) presence in the country since June 30, 1948; naturally the number of persons benefiting from this "registry date" diminishes with each passing year.

Legislative amnesty for individuals has two objectives, short-term and long-term. The short-term motivation is to prevent the deportation of the person or persons named in the private legislation. For many years, until Chairman Peter Rodino of the House Judiciary Committee brought about a reform, all bills introduced in the House of Representatives on behalf of an alien caused the postponement of deportation until the bill was either tabled by the Judiciary Committee (which was rare) or the session ended. A quick re-introduction of the private bill early in the next session, of course, restored the alien's immunity to deportation. At one point (in the 91st Congress) 7,293 such bills were introduced, although only 218 of them passed. In the 94th Congress, only 1,029 such bills were introduced and 99 passed. The long-term motivation for these bills is to give the alien time to wend his way through the circuitous paths of the immigration law, to secure the desired immigrant visa without need for the passage of the private bill *per se*. In some cases, of course, the private bills are enacted, and the individual secures the benefit desired, which is usually but not always permanent resident alien (legal immigrant) status. (Canada uses the term "landed immigrant" for this status.)

Those whose business is *judicial amnesty*, similarly, are often involved at the same time in both short-term and long-term manoeuvrings. Delay will often allow the previously illegal alien to find a job (which may provide labour certification[1], and thus an immigrant visa) or a U.S. citizen or permanent resident alien spouse, which will similarly provide both a marriage and an immigrant visa. In other cases the court action provides long-term benefits directly to the immigrant and, on at least one occasion, to a class of them.[2]

Administrative amnesty, while usually handled on a case-by-case basis, was granted wholesale during "Operation Wetback" by the INS, then headed by General Joseph Swing. At that time, INS was rounding up illegal aliens at rates exceeding 1,000,000 a year, while offering former agricultural employers of illegals an opportunity to rehire their former workers as braceros, i.e., short-term nonimmigrant workers.[3]

It should be noted that while this form of administrative amnesty was of some utility to the braceros concerned (if not to their competitors within the U.S. labour force), it was designed to meet the needs of the growers and not of the migrants. The bracero was converted from an illegal worker with the freedom of the unlawful, but with no rights, to a legal worker with no freedom of manoeuvre in the labour market and extremely limited rights.

Although there are many precedents in U.S. history for legalizing the presence of illegal aliens, there has never been an amnesty programme, or an amnesty proposal, as broad as that suggested by the Carter Administration in 1977. And even that proposal was not as all-encompassing as the Canadian programme or those of several Western European nations.

More specifically, the Carter Administration proposed full amnesty (permanent resident alien status) for those illegal aliens who had been in the nation since before January 1, 1970, and partial amnesty (a five-year-long temporary resident alien status) for those who had arrived between the earlier date and January 1, 1977. During a proposed five-year period these temporary resident aliens would be allowed to work in the U.S. and to cross the borders freely, but they would not be allowed to use that status to bring their families into the nation or to gain access to tax-supported programmes. Persons who entered the nation as foreign students were to be barred from the partial amnesty but not from the full amnesty.

The U.S. proposal for a two-layer amnesty apparently was made without knowledge of, and certainly without any sustained study of, either the amnesty programmes of Canada or those of Western Europe. This was perhaps not unusual -- in that U.S. domestic policymakers often act as though the rest of the world were not full of useful precedents -- but it certainly was the case. It is all the more remarkable because the previous U.S. amnesties were all piecemeal reactions to pressures from specific individuals or interest groups, whereas the Canadian and some of the European experiments were, like the Carter proposal, conscious efforts made to solve what were regarded as national problems.

Last year I had an opportunity to review the experiences of three European nations that had amnesty programmes: Belgium, the Netherlands, and the United Kingdom. In each of these nations, I interviewed the officials who managed these programmes, reviewed what statistics were available and talked to non-governmental people familiar with the results.[4] The European experience was mixed, generally small scale (by either U.S. or Canadian standards) and provided some useful lessons.

An excellent example of how not to mount an amnesty programme has been made available for us by the United Kingdom, where the Government stumbled backwards into their's because of a perfectly decent motive: a desire not to change the rules in the middle of the game. The story includes:

- complex eligibility rules;
- minimal response by the eligibles;
- deportation for some ineligibles who applied;
- criticism from the right for rewarding "illegal behaviour;"
- suggestions by immigrant-serving agencies that aliens ignore the offer; and
- intervention by the courts.

The U.K. — unlike the U.S. -- makes a major distinction between aliens who enter the country illegally (those who "come in over the beaches") and aliens who stay beyond the limits of their visas. The British have long had the power to deport visa overstayers but, until the Immigration Act of 1971, they could not deport illegal entrants. The new law meant that aliens who had entered illegally were suddenly deportable for what had not been previously a deportable offense. The only decent thing to do was to allow those who entered illegally prior to the effective date of the legislation to have their presence legalized. Home Secretary Roy Jenkins announced such an amnesty on April 11, 1974.

The offer, however, applied only to citizens of Pakistan and the Commonwealth, to those who had entered illegally before January 1, 1973, and who had stayed in the country continuously since then. The offer was publicized in BBC's English and non-English broadcasts and in multi-language pamphlets distributed through immigrant-serving agencies.

The courts then broadened the definition of illegal alien to include a small (and unattractive) subclass, those who had fraudulently obtained entry by the use of forged documents or other illicit means, which gave rise to another round of pamphlets, broadcasts and controversies in the second round of amnesty.

Meanwhile, a quarter of those seeking the first amnesty were rejected. Some of the rejectees became deportees; their exact number is not known. Presumably only a few met that fate, but there were enough to cause the immigrant-serving agencies to renew their objections. By the end of 1977, the more than three years of effort and controversy had produced very few results (see Table I).

TABLE I: THE U.K. AMNESTY OF 1974*

	Applied	Accepted	Rejected	Pending
Amnesty No. 1	2,346	1,679	585	82
Amnesty No. 2	63	6	5	52
TOTAL	2,409	1,685	590	134

* Date as of January 1, 1978.

Source: "Control of Immigration Statistics," March 8, 1978, Home Office Press Release

The Netherlands and Belgian amnesties offer more positive lessons than does the British experiment. In the former cases, amnesty was the objective, not a byproduct: the two Governments wanted to convert illegal workers to legal ones, and their offers were limited in terms of time but fairly generous in terms of eligibility. The Netherlands drew 14,000 takers in 1975 as compared with an estimated alien work force of 187,000; the Belgians, with an estimated alien labour force of 316,800, accepted 7,000, including two dozen citizens of the U.S..

The Netherlands say in retrospect that they fear amnesty breeds pressures for, and rumours of, additional amnesties; one such rumour was that Queen Juliana would retire and her successor would decree a new amnesty. This medieval notion of how social policy decisions are made in a modern monarchy was front-page news in Turkey (a major source nation for the Netherlands), and there was a bit of a rush for the Dutch borders.

What can the U.S. learn from the Europeans? Firstly, there are a number of pitfalls inherent in this process. Further, there is so little immigration law enforcement within the U.K. that one would be a fool to press anything short of clear-cut amnesty application — why identify yourself to those who might deport you when they will never find you otherwise? (The British cause the involuntary departure of aliens about 1,000 times a year, the French 10,000 times a year and the Americans 1,000,000 times a year.) In short, continuation of inland enforcement of the U.S. immigration laws would create strong incentives for potential beneficiaries to apply. This would be particularly true if the U.S. used an element of the Netherlands amnesty programme, as the U.K. did not. This was a no-loss provision; if you were eligible, you got your papers; if not, the Government of the Netherlands destroyed your application and forgot that you asked.

V. WHAT THE U.S. CAN LEARN FROM CANADA

(a) Similarities and Differences

There are both substantial similarities and remarkable differences which impact on the extent to which the U.S. can learn from Canada's amnesties.

The similarities are fundamental ones, visible, as it were, to the naked eye. The nations are adjacent, continent-wide, largely English-speaking democracies which, for most of their histories, have welcomed immigrants; Canada, in recent years, more enthusiastically than the U.S.. Both are very prosperous, at least compared to the Third World, from which both are drawing an increasing percentage of their migrants. Both nations, in the last two decades, have shaken off ethnocentric immigrant-selection systems.

Further, neither nation (unlike most Western European nations) makes significant use of multi-lateral or bi-lateral agreements regarding worker migration, which, had they existed for a number of years, would probably have made the question of amnesty a less pressing one. If such agreements are in place they create systems through which workers may move from the sending to the receiving nation in an organized manner, so that their rights within the host nation's labour markets are more likely to be recognized and enforced. Such agreements would, hopefully, reduce both the flow of non-legal migrants as well as the subsequent exploitation of such persons.

There are, however, three clusters of differences which must be noted: the political setting for the Canadian amnesty has no apparent U.S. parallel; the nature of the Canadian target population is quite different from the illegal alien population in the U.S.; and, finally, the institutional structures in the two nations are quite different.

The political setting in which Canada decided on its amnesty was a much more comfortable one than facing the U.S. Government. The Government admitted that its prior policies (adjustment to landed status within Canada, unlimited deportation appeals) had been wrong; and they changed them. This created an opportunity (and an obligation in the eyes of the Government) for a one-time-only clearing of the decks. All those who had been injured, or potentially injured by the changing of the rules were to have one last chance to secure landed immigrant status.

The Government came to the illegal aliens (and nonimmigrants) with an even-handed message: either convert your status to that of immigrant now or face (for the illegals) deportation or (for the nonimmigrants) the lack of an opportunity to adjust status to that of immigrant within Canada. Both the carrot and the stick were wielded. Further, while the Canadian Government was making a correction on a pair of highly specific decisions made a few years earlier, the Carter Administration sought to remedy the U.S. neglect of immigration enforcement over a period of some 25 years, without admitting that this needed to be done. Even more basically, the migration across the U.S.-Mexico border has stronger historic roots than any of the lesser and newer migrations that the Canadians were seeking to control.

Given the one-shot nature of the programme, and the balance of the inducement and the consequences of not accepting the inducement, the Government was able to build substantial political support for its program. It then proceeded to manage the politics of the situation skillfully, moved its programme through from inception to fruition quickly, and then opened and closed the operation with dispatch. Because of these factors, amnesty was virtually controversy-free until the last of the sixty days, when the Minister refused to extend the offer, for which the Government was criticized by the immigrant-serving agencies and by parts of the left wing. By U.S. standards, it was a political honeymoon from start to finish.

The target population of the Canadian amnesty was not only proportionately smaller than the comparable U.S. population, it also had very different characteristics. Virtually all illegals in Canada would be classified in the U.S. as visa abusers; they had secured passports from their countries of origin, visas from Canadian officials and airline tickets. Such persons in the U.S., although in the nation illegally, tend to be more urban in origin and have more education than the other broad class of illegal aliens, the illegal entrants who have walked (or swam) across the U.S.-Mexico boundary. The illegal alien population in Canada, then, appears to be one that would be more likely to respond favorably to an amnesty offer than the comparable population in the United States. Further, Canadian illegals were unlikely to have had the experience of being apprehended at the border; many illegal aliens in the U.S. have had such an experience; and gentle though INS may try to be, such an encounter might well discourage further contacts with that agency.

The third sets of differences are institutional ones. The parliamentary system, given a one-party majority, is much more conducive to democratic decision-making than either the U.S. checks-and-balances system or a parliamentary system with a multi-party government. Once the Government makes up its mind and draft legislation is introduced, party discipline takes over and needed legislation can move through swiftly. Further, much of what is highly-detailed, legislatively-crafted law in the U.S. is handled by regulations in Canada; it is much easier to change policy in Canada than in the U.S.

In this situation, for example, shortcircuiting the appeals procedure (always on behalf of the immigrant) in Project 80, and eliminating the option of in-country adjustment of status (which had a negative impact on immigrants), were both handled by changing regulations, without need for legislative action. Project 97, however, was founded in a statute, but one which sped through the parliament at a speed used in the U.S. Congress only for a Declaration of War.

There are other, somewhat less visible institutional factors. A parliamentary system provides built-in administrative flexibility. Could INS select an advertising agency in a matter of 48 hours, and then plan a multi-million dollar advertising campaign in the following 48 hours? To ask the question is to answer it. Further, the role for lawyers in the Canadian systems appears to be smaller than it does in the U.S.. To the best of my knowledge, there were no court cases in connection with either amnesty programme; the players were the politicians (primarily Andras), the civil servants and the immigrants. (It should be noted that the press was very supportive to the Government throughout this process, more so than the U.S. press would be under similar circumstances; the notion of near perpetual press-government conflict is not yet rampant in Canada.)

Finally, one cannot help but be impressed by the calibre of the Canadian officials involved; the levels of skill, grace and dedication are remarkable.

In short, the Canadian Government was faced with a less difficult problem than that facing the U.S. Government; the population of concern was easier to deal with than the one in the U.S.; and the Canadian institutional framework was, and is, more conducive to rapid and creative responses to public problems than that of the U.S.. Despite these fundamental differences, however, there are some lessons that the U.S. can learn from the Canadian experience.

(b) The Lessons

The U.S. can learn the following from the Canadian (as well as the Western European) experience:

- Running an amnesty programme for an unidentified, underground population is very, very difficult at best; if the Government wants a substantial response, it will have to devote all the ingenuity and skill it can muster, plus substantial amounts of leadership, staff time and money.

- A meaningful combination of the stick and the carrot (which the Canadians had, and the British did not) is useful politically and operationally. Politically, it helps build a consensus in the population as a whole; operationally, offering a benefit together with a threat (of the consequences of not accepting the offer) presumably raises the level of participation.
- The offer should be as simple as possible.
- The offer should be as believable as possible
- It is important to enlist the maximum sympathetic interest of the press.
- It is vital to instill within the agency handling the programme a sense of high purpose, of excitement and, if possible, of glamour and joy.

On all of these points, the Canadians did extremely well. From the hindsight of a few years, it appears -- to those who were there, either as participants or observers -- that the Canadian programme could have been improved by:

- More advance planning; and a better understanding before the beginning of the programme of the nature and the needs of the target population.
- Closer contact with the multiplicity of ethnic and immigrant-serving organizations, which tend to be a hard-to-reach population in and of themselves.
- More personal outreach work to individual aliens.
- A greater emphasis on reaching those groups which one can anticipate will be the most reluctant to come forward (the students will come anyway).

On a policy level, the Canadians feel strongly, and understandably, that what they did (no matter what the level of the response) was a good thing intrinsically. There was an apparent need to change the rules regarding the control of migration; this was done. There was a need to offer remedies for those aliens who were caught in the changing of the rules; this was done.

The Canadian officials were content that their short, intense programme was most appropriate for the task; and, while the excitement and the press coverage thus generated were undoubtedly helpful, it is doubtful that the U.S. could mount a productive effort in such a short timeframe. I do not think the U.S. institutional structure is up to that level of challenge.

Finally, if the U.S. does anything in the field of amnesty, the nation should look northward and learn from the Canadian experience.

21.

Is Amnesty For Illegal Aliens a Sound U.S. Policy?

by Hon. Richard S. Schweiker
United States Senator, Pennsylvania, Republican

From a statement issued on August 29, 1977, and from remarks delivered on the floor of the U.S. Senate on May 25, 1977, on the occasion of his introduction of S. 1601, a bill designed to protect American workers from the adverse impact of illegal alien employment.

I OPPOSE PRESIDENT CARTER'S PLAN to grant amnesty to illegal aliens. I believe this proposal is ill-conceived, based on erroneous assumptions, and mischievous in impact.

"I believe this proposal is ill-conceived, based on erroneous assumptions, and mischievous in impact."

In his recent message to Congress, the President accurately stated the problem: "In the last several years, millions of undocumented aliens have illegally immigrated to the United States. They have breached our nation's immigration laws, displaced many Americans from jobs, and placed an increased financial burden on many states and local governments". The Immigration and Naturalization Service estimates that one million jobs are now held by illegal aliens. And yet, the essence of the President's plan is to reward this illegal conduct with special benefits for which aliens who have obeyed the law will be ineligible.

Although there are precedents in our history for granting an amnesty or pardon to lawbreakers to remove the adverse consequences of law enforcement, the illegal alien amnesty plan goes much further. It puts the government squarely behind the lawbreaker, and, in effect, says, "Congratulations, you have successfully violated our laws and avoided detection—here is your reward."

Millions of people throughout the world, including legal aliens temporarily in the United States and relatives of American citizens, have tried to work patiently within the confines of the immigration laws to obtain permanent status and eventually American citizenship. If the Administration's proposal is adopted, the government will be saying to them, "Sorry, we have nothing for those who obey the law." We are fond of saying America is a nation of laws. By accepting the President's plan, we would be setting a nasty precedent of putting the government on the side of the lawbreaker by rewarding his illegal conduct and undermining the efficacy of our laws.

". . . the illegal alien amnesty plan . . . puts the government squarely behind the lawbreaker and . . . says 'congratulations'. . ."

The amnesty proposal is not only misguided in approach, but also based on erroneous assumptions. Administration spokesmen have conjured up images of massive dragnets of federal officials having to comb communities throughout the nation for illegal aliens unless amnesty is granted. Obviously, this could not and would not happen. Enforcement of the immigration laws against illegal aliens has been a very difficult task. But one of the primary reasons is that employers at present can lawfully hire illegal aliens. Easy employment in the United States is the primary attraction for illegal aliens. We need effectively to cut off this source of jobs which rightfully belong to Americans and legal immigrants. When this is accomplished, I suspect many illegals would return to their homes, and others

(Continued on page 237)

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CON

SCHWEIKER, cont. from page 235

who are deported would have no incentive to return to the United States. The assumption that the only alternative to a massive round-up and deportation of millions of illegal aliens is to grant a general amnesty is simply erroneous.

Although the Administration emphasizes difficulties in enforcing the immigration laws against illegal aliens, there appears to be no adequate appreciation of the problems involved in enforcing the proposed amnesty plan. Under the President's proposal, aliens without legal status who have been in the United States since before January 1, 1977, but not as early as January 1, 1970, will be placed in a new category called "temporary resident alien." Almost certainly, the Administration contemplates that these people will in several years be granted full amnesty and adjusted to permanent resident status, the last step before American citizenship. Apparently, all that will be necessary to establish residency since prior to January 1, 1970, is to show rent receipts, wage records, or the like. It is unclear how the Immigration and Naturalization Service will be expected to detect fraudulent records.

". . . there appears to be no adequate appreciation of the problems involved in enforcing the proposed amnesty plan."

The possible ease with which even newly arriving illegal aliens will be able to take advantage of the amnesty compounds the mischief of the proposal. Recent reports from Immigration officials at our southern border show a significant increase in illegal alien traffic since talk of amnesty began. Although the proposal on its face may appear not to benefit new arrivals, the lack of understanding of the limits of the plan and the difficulties in enforcing it actually aggravate this very burdensome problem.

For these reasons, I oppose the Administration's amnesty plan. But I support the President's recent call for sanctions against employers who knowingly hire illegal aliens. Some months ago I introduced legislation (S. 1601) to make it unlawful to knowingly employ an illegal alien and to provide stiff fines for those who choose to violate the law. Although my bill prescribes a stronger arsenal of penalties to deter violations than the Administration proposal, I welcome this part of the President's program. Drying up employment opportunities, not rewarding illegality, should be the cornerstone of our nation's policy toward illegal aliens. We should open up the jobs illegal aliens now hold to unemployed Americans and legal immigrants, not make permanent the unfair labor competition. I believe strong employer sanctions can go far toward accomplishing this goal. I feel employer sanctions are a workable program to deal with the problem of illegal aliens without rewarding illegality.

I stated the case for such a policy as follows when I introduced S. 1601 on May 25 of this year:

Unemployment in the United States today is our most urgent domestic problem. The administration, Congress, the governments of our States, and the American people have properly focused great attention on efforts to put the economy back on track and alleviate the personal hardships of unemployment. One step we can take in the right direction is to protect American workers from the unfair competition of illegal aliens who take jobs which should be held by American citizens and those lawfully in the United States and depress prevailing wage rates and working conditions we in Congress have worked so hard to guarantee.

". . . I oppose the Administration's amnesty plan. But I support . . . sanctions against employers who knowingly hire illegal aliens."

Action in this area will certainly not solve all of our economic problems, but I

(Continued on page 239)

CON

SCHWEIKER, cont. from page 237

have concluded it is a necessary step. Although we do not have reliable statistics on how many illegal aliens there now are in the United States, estimates range from four to eight million. The Commissioner of the Immigration and Naturalization Service estimates that as many as one million jobs are improperly being held by aliens not authorized to work. The adverse impact of these figures is obvious. Moreover, the magnitude of the problem illustrates a great distortion to our immigration policy, probably the most compassionate in the world. In fiscal year 1975, Immigration authorities caught about twice as many illegal aliens as the number lawfully admitted that year for permanent residence.

"In fiscal year 1975, Immigration authorities caught about twice as many illegal aliens as the number lawfully admitted that year for permanent residence."

The primary drawing card for aliens seeking to illegally enter the United States is the greater economic opportunity here than in the nations from which they come. These illegal alien workers can successfully compete with American workers as they will often work for lower wages and under unfavorable working conditions. There is simply no way Immigration officials can adequately deal with this problem as long as the enticement of employment in the United States remains. We must, therefore, close off these attractive opportunities by first, making it unlawful for an employer to knowingly hire an illegal alien, and second, by providing effective sanctions against employers who choose to violate the law.

I would like to mention several aspects of my proposal. First, a ban on knowingly employing illegal aliens will be less than fully effective without strong and efficient sanctions for violations. Although I share the fear of some that a flat rate civil penalty will not effectively deter some employers, I do not advocate criminal penalties, primarily due to several problems of practical application. I propose that the legislation provide an arsenal of civil penalties, increasing in severity with each additional violation.

A second aspect of this bill I wish to highlight deals with the issue of whether we wish to allow States to also legislate in this field. I believe Congress should not preempt the field, and should say so in the act. Although the adverse impact of illegal alien employment is national in scope, it certainly is more serious in some areas of the country than in others, and is manifested in different job markets in varying geographical areas. Not only can State legislatures better deal with the nuances of the problem within their State, the States can also provide needed enforcement personnel resources to deal with the overall problem. Of course, no State legislation may conflict or be inconsistent with the congressional enactment.

"Not only can State legislatures better deal with the nuances of the problem within their State, the States can also provide needed enforcement personnel resources . . ."

A third aspect of this bill I wish to highlight is one which creates a private course of action for enjoining violations of the ban, in addition to power of the Government to seek an injunction. In view of the enormity of the effort required by the Government to deal with the problem which exists, I feel the Government should welcome the cooperation of the private sector. Such plaintiffs could include competing businesses, labor unions, private individuals, and others adversely affected by illegal alien employment.

A fourth point I wish to note is a proposal aimed at easing the direct expense to the taxpayer for enforcement of these and other provisions of the Immigration and Nationality Act. It has been estimated that any effective attack on illegal alien employment will cost an additional $12 million each year. As a means of

(Continued on page 241)

CON

SCHWEIKER, cont. from page 239

attempting to partially hold down the appropriations for the Immigration and Naturalization Service, I suggest that all administrative and civil penalties, such as those assessed for knowingly employing illegal aliens, paid into the Treasury under the act be counted as a credit under the Service's appropriation for that year.

I hope my colleagues will seriously consider this and other proposals which have been made to make available to American workers jobs which have been illegally taken by violators of our immigration laws.

by Hon. James A. McClure

United States Senator, Idaho, Republican

From a statement issued on August 5, 1977, and from remarks delivered on the floor of the U.S. Senate on May 25, 1977, on the occasion of the Senator's introduction of S. 1604, a bill relating to State determinations of need for temporary alien workers in agriculture.

THE PRESIDENT'S MESSAGE on illegal aliens is actually a non-message. First, the President talks of beefing up the border patrol when the real problem is in the big cities.

"The President's message on illegal aliens is actually a non-message."

Second, the President says he will respond to the legitimate needs of employers by providing a needed workforce, but then he says it will absolutely not be a Bracero-type program. There is indeed a legitimate need among many Idaho farmers and ranchers, and the only possible answer is a program to certify aliens to come and do the job for a temporary period of time—and that is a Bracero-type program.

I have always made it very clear that I oppose putting the "burden of proof"—and the burden of possible penalties—upon the employer. It should not be his responsibility to prove whether a worker is legally in the United States or not.

Finally, the President's proposal to make illegals "temporary resident aliens" with the right to work in the U.S. for five years—and compete for more attractive jobs in the already overloaded labor market—is incomprehensible to me. After all the White House has said about the alleged unemployment caused by these aliens, it seems incongruous that we now consider making them "legal."

The farmers and ranchers who have been forced to hire illegals because of a shortage of workers, take no comfort in the amnesty proposal. Instead of providing the labor for less attractive jobs, these former illegal aliens will now compete for easier, better jobs.

"After all the White House has said about the alleged unemployment caused by these aliens, it seems incongruous that we now consider making them 'legal.' "

This is not a new problem; nor is it a simple one. To call for criminal sanctions against those who knowingly hire an illegal alien to me seems markedly unfair since many of the employers of illegal alien workers are farmers who are virtually forced into that position, knowingly or unknowingly, by the policies of the Federal Government, in order to save their crops.

Admittedly there are many jobs in this country filled by illegals which could

(Continued on page 243)

CON

McCLURE, cont. from page 241

and should be held by Americans—and certainly the situation should be corrected. We cannot overlook, however, the fact that there are many jobs vital to the Nation's economy—particularly in agriculture—which American workers are simply not willing to fill. For one thing, we in Congress and the Government bureaucracy have made unemployment and welfare benefits so readily available and comparatively lucrative, that few if any of our unemployed are willing to give them up to accept these menial jobs. It is no accident that illegal aliens are relied upon so heavily in my own State of Idaho to move irrigation pipe, for example. The obvious truth is simply that as important as moving irrigation pipe is to the success of agricultural crops, in most cases, if farmers do not hire aliens to do the work, it will not get done.

It seems obvious the law should provide for this kind of situation. There should be a way needed alien workers can come into the United States temporarily to fill these jobs legally. Theoretically, there is such a provision—the Immigration and Nationality Act does provide for labor certification of temporary alien workers. However, it also gives the Department of Labor the right to withhold such certification unless American workers are found to be unavailable not only within the area where the jobs exist, but within the entire United States, including Puerto Rico, Hawaii, and Alaska. Moreover, the Labor Department has also been responsible for issuing regulations which a farmer must meet in order to qualify for certified alien workers.

". . . in most cases, if farmers do not hire aliens to do the work, it will not get done."

This is where our problems really begin, since the difficulty if not impossibility of complying with these regulations, their inflexibility and lack of responsiveness to the needs of farming operations where time can make the crucial difference between a successful crop and failure, have left farmers with little alternative but to hire available, willing labor without concern as to the legality of their presence in the United States. What is even more disturbing, the difficulty of meeting the requirements of the certification process in fact compounds the problems and conditions of foreign entrants into the United States who are exploited and abused by those who actually traffic in bringing them into the country outside the law.

It is easy for Government bureaucrats thousands of miles away from the small farmer in Idaho to dictate everything an employer should offer from salaries to sanitary facilities—with little idea of the actual effects of such regulations. It is also very difficult for Department of Labor officials—who are constantly faced with high unemployment rates and pressure from above to cut unemployment—to realize that there are vacant jobs which will not be filled by the American unemployed. An unemployed factory worker in Detroit simply is not going to be willing to move to Idaho to herd sheep. It is unrealistic to think he will, even if the employer provides housing for his entire family, as the Department of Labor regulations would require. The ranchers in Idaho know from experience not even family housing will attract unemployed Americans to herd sheep, and yet they are required to go through the charade of seeking out employees throughout the entire Nation.

"An unemployed factory worker in Detroit simply is not going to be willing to move to Idaho to herd sheep."

It seems to me those in the agricultural industry in places like Idaho are faced with a classic example of bureaucratic bungling which has made their efforts to be successful farmers and ranchers much more difficult—and in many cases, has even threatened their livelihood.

(Continued on page 245)

CON

McCLURE, cont. from page 243

Not only commonsense, but experience as well, points to the conclusion that labor shortages in particular industries are localized in nature. The final determination that alien workers are necessary in a particular locality should not be left in the hands of the Federal Government based on a nationwide search for available workers. The absence of available workers within the State and the immediately surrounding area should be sufficient to qualify for alien workers.

Farmers and ranchers should not have to meet standards set by nonfarmers and ranchers thousands of miles away who know nothing about farming and ranching, the economy of the State or the realistic capabilities of the agricultural industry.

I am introducing a bill which will amend the Immigration and Nationality Act and the Wagner-Peyser Act of 1933, to put the responsibilities of determining need and proper employment conditions for temporary alien agricultural workers where they should be—in the hands of the State government. This proposal will allow that, in the case of agricultural labor, the Governor of each State will have the responsibility to determine whether or not there is a shortage of labor sufficient to require the use of alien workers. It also provides that the Governor of each State will be responsible for establishing rules and regulations governing labor certification for temporary alien workers in his State. The Governor is in a much better position to determine the realities of the labor market in his area. The Governor certainly can more fairly judge the proper housing, salary, benefit requirements, et cetera which will be fair both to the worker and to the employer.

"The absence of available workers within the State and the immediately surrounding area should be sufficient to qualify for alien workers."

by Hon. John M. Ashbrook

United States Representative, Ohio, Republican

From remarks addressed to the U.S. House of Representatives on July 13, 1977.

THERE IS AT PRESENT an "amnesty" under consideration which would give permanent residence in this country to millions of previously illegal aliens, a substantial proportion of whom entered from Mexico. Those who consider this to be a moral idea must consider themselves to be the ethical superiors of the Republic of Mexico, for that country is committed to an opposite point of view. Policy south of the border is firmly, and I think correctly, dedicated to providing protection for the jobs and financial security of Mexicans first.

The Mexican Constitution states clearly that . . . "The Federal Executive shall have the exclusive power to compel any foreigner whose remaining in the national territory he deems inexpedient, to leave immediately without the necessity of previous legal action."

That Constitution goes on to make it clear how Mexico would treat demands, like those made by Cesar Chavez in the United States, that noncitizens be given the right to vote:

"Foreigners may not in any way participate in the political affairs of the country."

"Those who consider this [amnesty] to be a moral idea must consider themselves to be the ethical superiors of the Republic of Mexico."

(Continued on page 247)

CON

ASHBROOK, cont. from page 245

Note that this is not only a denial of the vote to non-Mexicans. It goes farther, preventing foreigners from working in campaigns for example, backing candidates who support the boycott of grapes or contributing to candidates financially.

Many of our professional moralists would consider our taking the same position as that expressed above by Mexico to be horrifying. But the Mexican attitude is the same as that of countries around the world: that it is the first duty of a government to protect and provide for the people it governs. I put our workingmen and taxpayers first and that is why I vigorously oppose President Carter's amnesty proposal.

What would be the attitude of the Mexican Government if millions of illegal immigrants from a far poorer country such as India or Bangladesh were found to be inside the country in a time of substantial unemployment? Does anyone doubt that the Mexican executive branch would find these immigrants remaining in the country "inexpedient"? Of course not. Mr. Portillo would carry out his constitutional and his moral obligation to protect the citizens of his country from excessive immigration.

"I put our workingmen and taxpayers first and that is why I vigorously opposed President Carter's amnesty proposal."

Does our American executive branch have less of a constitutional and moral obligation to protect the citizens who in 1976 entrusted their well-being to the present administration's? Does the U.S. Constitution, which commits our Government to "promote the general welfare," impose less of an obligation on Mr. Carter than his constitution does on Mr. Portillo? I think not. I think it is Mr. Carter's obligation to compel illegal aliens who are taking American jobs to leave immediately, and with no more legal action than that with which they got here in the first place.

by Hon. Mario Biaggi

United States Representative, New York, Democrat

From remarks addressed to the U.S. House of Representatives on April 22, 1977.

I WISH TO BRING TO THE ATTENTION of my colleagues the increasingly negative impact of illegal aliens on the economic life of this Nation.

The simple fact is, our Nation cannot afford to subsidize the illegal aliens who are here. We provided almost 3 million of them with jobs—we provide hundreds of thousands of others with welfare and other public assistance. We allow their children to attend our schools, we allow them to compete with low-income American citizens for scarce public housing.

What we do know for certain is we must close the floodgates to prevent new illegals from entering. I have introduced H.R. 6525 which seeks to accomplish this goal by making it an immediate crime to hire illegal aliens. Employment continues to be the primary magnet which lures illegal aliens into this Nation, and to be successful in keeping new illegals out we must deter employers from hiring them. My bill also provides for an additional 2,500 Immigration Service

"The simple fact is, our Nation cannot afford to subsidize the illegal aliens who are here."

(Continued on page 249)

CON

BIAGGI, cont. from page 247

enforcement personnel to help better patrol our borders to prevent new illegals from entering. Finally, my legislation also increases the penalties for smuggling illegal aliens into this Nation. Estimates show that the numbers of illegal aliens being smuggled into this Nation has tripled since 1972.

We are aware that the Carter administration is contemplating some form of amnesty for illegal aliens who have been in this Nation for a certain time. I am adamantly opposed to granting blanket amnesty for illegal aliens. I do feel that certain consideration should be given to avoiding the unnecessary breakup of families through deportation.

The decisions which have to be made with respect to illegal aliens will be difficult ones. We may need a restructuring of our immigration laws. We should, as I have proposed, convene an international conference to discuss the illegal alien problem and its international ramifications. We must be cognizant of the fact that at the present time the population of the 15 major nations supplying illegal aliens is almost five times greater than our own and by the year 2000 the combined populations of these nations will exceed 1 billion persons. It is imperative that we develop both immediate and long-range solutions to this problem.

"I am adamantly opposed to granting blanket amnesty for illegal aliens."

The illegal alien problem poses special problems for the city of New York which has one of the largest illegal alien populations of any area of the United States. It is obvious that solutions must be developed. They will cause some hardships but it is time that we gave American citizens and legal aliens better economic protection. Illegal aliens continue to drain the economic lifeblood of this Nation and unless we put an end to it, the economic security of all Americans will be threatened.

by Hon. Morgan F. Murphy

United States Representative, Illinois, Democrat

From an August 1977 statement, "The Silent Invasion of Illegal Aliens."

"Give me your tired, your poor,
Your huddled masses yearning to breathe free . . ."

THESE WORDS, INSCRIBED ON THE Statue of Liberty, are America's welcome to immigrants seeking a better life. Traditionally, America has enjoyed and clung to its image as the land of opportunity to the rest of the world.

But as our population has grown and economic conditions have worsened, the U.S. has had to take a second look at its immigration policies.

The reason: our country is silently being invaded by an army of illegal immigrants. As a recent article in *Time* magazine pointed out, these "invaders," eager to share in America's bounty, are coming by "land, sea and air." Some hop planes, others jump ships, and some even pass through the San Antonio sewer system. While illegal immigrants are here to seek the American Dream, many persons fear they may be destroying it for others.

". . . our country is silently being invaded by an army of illegal immigrants."

Who are the illegal aliens? Eight out of ten come from Mexico, which has an

(Continued on page 251)

CON

MURPHY, cont. from page 249

unemployment rate of almost 40 per cent. Mexicans who are able to find a job may be paid as little as $1 per day.

Where do they live? Most illegal immigrants work on farms in the South or Southwest. But a growing number live in large Northern cities, where they work as dishwashers, porters, laundrymen, and busboys.

Currently, only 290,000 persons are granted visas to migrate to the U.S. each year. That contrasts with the policy prior to the 1920's which placed no numerical restrictions on migration to the United States.

But this seemingly strict immigration quota has not been enforced. The Immigration and Naturalization Service (INS), which administers the immigration laws, reports there are between six and ten million illegal aliens now living in the U.S.

The number of illegal immigrants has increased dramatically over the past sixteen years. For instance, last year the INS apprehended and expelled 875,000 illegal aliens—almost ten times the number expelled in 1961.

". . . INS . . . reports there are between six and ten million illegal aliens now living in the U.S."

Because of the recession, the problem of illegal immigration finally has caught the eye of the public and government officials. At a time of high unemployment, illegal aliens are taking hundreds of thousands of jobs away from Americans because of their willingness to work for low wages.

For example, *Time* magazine reported that even though Houston is enjoying a building boom, there is widespread unemployment among union carpenters. This is because contractors are waiting to hire Mexican immigrants who will work for less than the minimum wage. The INS estimates that today there are over one million jobs held by illegal immigrants that could be filled by Americans. If U.S. workers held those jobs, our unemployment rate could drop from 7.1 per cent to 6.1 per cent.

In addition, *Time* noted that illegal aliens are adding new burdens to our social welfare system. Aliens are getting on Medicare and Medicaid rolls, receiving free medical treatment at hospital emergency rooms, and sending their children to tax-supported public schools. In 1975, 370 illegal aliens seized in New York were found to have received $500,000 in welfare payments. All told, the INS believes that illegal aliens cost American taxpayers $13 billion per year in social welfare services.

It is not surprising, then, that Americans favor changes in immigration policy. According to a recent Gallup poll, an overwhelming 82 per cent of the public say they support a law prohibiting employers from hiring aliens without proper papers. And some 42 per cent favor a decrease in present immigration levels. (Only 7 per cent favor an increase, and 37 per cent support current immigration levels.)

What can be done about illegal immigration? On August 4, President Carter unveiled his plan dealing with illegal aliens. Among the recommendations: (1) Amnesty for illegal aliens who have lived in the U.S. more than seven years. (2) "Non-deportable" status for illegal aliens who have lived here less than seven years. (Those who arrived here after January 1, 1977, would be subject to deportation.) (3) Civil fines for employers who engage in a "pattern or practice" of hiring illegal aliens. (4) Tougher patrol of the 2,000 mile-long Mexican border by adding some 2,000 additional guards. (5) Stricter enforcement of the wage-and-hour laws to reduce employers' incentives to hire illegal aliens.

". . . the INS believe that illegal aliens cost American taxpayers $13 billion per year in social welfare services."

(Continued on page 253)

CON

MURPHY, cont. from page 251

The President has taken some positive steps in dealing with a very complex issue. But the plan contains some serious pitfalls. On the positive side, Carter rightly intends to see that wage-and-hour laws are strictly enforced. This is necessary if the U.S. aims to stop aliens from working for subminimum wages. Illegals are now taking hundreds of thousands of jobs from teenagers, the unskilled, and poor blacks. They also depress wage scales and working conditions of other U.S. workers. The AFL-CIO has testified that American workers annually lose $10 billion in wages due to competition from illegal aliens.

The President's call for beefing up the border patrol is also commendable. However, the President should consider adding as many as twice the number of border patrol guards as he now proposes. While 4,000 new guards might seem to be a large number, the fact is our country has sorely neglected the illegal alien problem for the past ten years. Our preoccupation with Vietnam, the recession and Watergate have prevented us from focusing on the true dimensions of this problem. Therefore, we have a great deal of catching up to do to meet the budgetary and manpower needs of the Border Patrol and INS. While efforts to halt immigration will cost the U.S. money, America will pay a much higher price if it decides to let this problem go.

"Fining employers who hire illegal aliens is imperative so the U.S. can turn off the 'magnet' of jobs that attracts illegal aliens."

Fining employers who hire illegal aliens is imperative so the U.S. can turn off the ''magnet'' of jobs that attracts illegal aliens. Since currently there are no penalties for hiring illegal aliens, Carter's recommendation of civil fines is a needed improvement. Criminal sanctions would be more effective, as many employers—not having to risk prison—will simply consider fines part of the cost of doing business. Nevertheless, because the Senate has failed to act on bills requiring criminal penalties in the past, Carter's proposal appears to be the toughest sanction possible.

A sticky question related to penalizing employers is how to provide them with the means to identify illegal aliens. Since so many illegal immigrants have forged birth certificates and Social Security cards, how are employers supposed to determine whether a person is an illegal? Clearly, the effectiveness of Carter's plan is jeopardized if employers have no reliable way to check a person's citizenship.

To remedy this, some have suggested that a national identification card be issued to every American. This way, every person applying for a job could present proof of his citizenship or legal residence.

To be sure, fears have been expressed that such a card could become a kind of ''work permit'' that the government could withdraw for political or simply arbitrary reasons. But such fears are exaggerated. After all, every American is now issued a social security card that is widely used for identification purposes. Yet no abuses have occurred along the lines that civil libertarians fear. And columnist Tom Braden recently pointed out: ''European democracies have used national identity cards for years without turning them into instruments for the benefit of gestapos.''

A national ID card may be the only effective way of prohibiting the hiring of illegal aliens. As former Undersecretary of Labor Richard Schubert testified in 1975: ''I don't think there is anything repugnant in asking an employer to check a person's citizenship. The (illegal alien) problem is serious enough to warrant extraordinary measures.''

"A national ID card may be the only effective way of prohibiting the hiring of illegal aliens."

(Continued on page 255)

CON

MURPHY, cont. from page 253

The most controversial part of Carter's plan is his proposal to grant amnesty to illegal aliens who have lived here more than seven years. The President's plan is based on his desire to "avoid having a permanent 'underclass' of millions of people who have not been and cannot be practicably deported." Mass deportation, of course, is out of the question. It would be both inhumane and impractical. But amnesty raises such serious moral and practical questions that Congress should reject it.

Is it fair to grant citizenship to those who are here illegally while we deny or delay entry to those who apply to come legally? And how can amnesty be granted without encouraging even more persons to immigrate illegally in hopes of being granted amnesty?

". . . amnesty raises such serious moral and practical questions that Congress should reject it."

Carter's plan to grant "non-deportable" status to those who have lived here less than seven years also raises questions. Is it reasonable to believe that the U.S. would allow millions of illegal aliens to live and work in the U.S. for five years, as Carter proposes, and then deport them at the end of that time? Granting a "non-deportable" status appears to be a delayed amnesty proposal.

It is possible, then, that Carter's plan could eventually result in the granting of amnesty to an estimated six to ten million illegal aliens. The practical consequences of this would be profound. Once an illegal is allowed to become a permanent resident, he can bring in his immediate relatives under present U.S. immigration law. According to a recent study done for the Labor Department, illegal aliens have an average of four to five dependents. This means that if eight million illegal aliens were granted amnesty, our population could increase by a staggering 32 to 40 million persons.

Unfortunately, President Carter does not seem to have looked before he leapt with his amnesty proposal. With our unemployment rate already high, how does the U.S. intend to provide jobs for this massive influx of people? What about homes, schools, welfare and medical services?

The plain fact of the matter is that a tremendous increase in our population would greatly hinder our ability to solve our economic and social problems. I believe the U.S. owes jobs and a decent standard of living to those who are here legally more than it owes citizenship to those who choose to live here illegally.

". . . if eight million illegal aliens were granted amnesty, our population could increase by a staggering 32 to 40 million persons."

The U.S. should, of course, help Mexico and other countries foster economic development so their citizens won't feel the "push" to migrate to the U.S.

Melanie Wirken, an expert on the illegal alien problem, has rightly said: "Drafting a solution is as complicated as the problem itself." So the choices we must make are hard. But somehow we must come to grips with the reality that our resources are not unlimited.

C. TEMPORARY WORKER PROGRAM

22.

May 7, 1977

PROPOSAL FOR A SYSTEM OF TEMPORARY WORKER MIGRATION VISAS

by

Wayne A. Cornelius
Department of Political Science
Massachusetts Institute of Technology

This memorandum sets forth the rationale for a system of temporary worker migration visas, as one component of a U.S. policy to deal with the problem of undocumented aliens. It describes how such a system might work, the benefits of the system, and the main objections which might be raised to it.

A PROPOSED SYSTEM OF TEMPORARY WORKER MIGRATION VISAS

(1) The proposed system would involve issuing, through U.S. Consulates in Mexico, a predetermined number of temporary worker visas permitting up to 6 months (not necessarily consecutive) of employment in the U.S. each year.

(2) To maintain a valid visa, the worker would be required to leave the U.S. for at least six months a year. The date of each return to Mexico would be stamped on the visa by U.S. immigration authorities at the border.

(3) Mexican workers acquiring a temporary worker visa would be told at the time the visa was issued that if they ever violate the time restrictions on employment in the U.S., they will never be able to obtain another visa. Those who do overstay their visas would be placed on a list of visa abusers to be maintained at all U.S. consular offices in Mexico.

(4) Visas would be issued by U.S. Consulates on a first-come, first-served basis, up to the predetermined monthly quota. No pre-arranged contract between the Mexican worker and a U.S. employer would be required to obtain a visa.

(5) No geographical constraint would be imposed on the movements of the visa holder within the U.S.; nor would there be any restrictions on the type of enterprise in which he can seek employment.

(6) The number of visas issued should be adjusted on a monthly and yearly basis, to reflect fluctuations in the U.S. demand for alien labor and the rate of unemployment and underemployment within Mexico. The be-

partment of Labor could monitor employer needs for alien labor on a monthly basis through a national sampling of employers who typically hire alien workers (especially in agriculture, hotels and motels, restaurants, and construction firms).

The number of visas issued per month should also reflect the well-established cyclical or seasonal nature of Mexican migration to the U.S. Studies have demonstrated that the majority of migrants depart in the February-April period each year (the period of relative inactivity in Mexican agriculture) and return to Mexico in the September - December period.

The ceiling on visas to be issued in any given year would have to be set high enough to provide legal temporary immigration opportunities for a significant proportion of the workers who now migrate illegally to the U.S.; otherwise illegal immigration would continue at an undiminished pace. It is proposed that the ceiling for the first year of the program be set at 800,000. While quite substantial, this figure represents only about one-third of the total estimated number of Mexicans who entered the U.S. illegally in 1976. An appropriate month-by-month allocation of temporary worker visas during the initial year of the program would be as follows:

Month	Maximum number of visas to be issued
January	50,000
February	200,000
March	200,000
April	150,000
May	50,000
June	50,000
July	50,000
August	50,000
September	0
October	0
November	0
December	0

It should be emphasized that the proposed program would not imply a major expansion of the supply of alien labor in this country. Most of the temporary visa holders should not be viewed as new entrants to the U.S. labor force; the vast majority will already have had one or more work experiences in the U.S., and would have gone again as undocumented aliens, had they not received temporary worker visas.

(7) At least initially, the temporary worker visa program would be limited to Mexican workers. The desirability of restricting the program to Mexico stems from the following considerations:

   (a) The overwhelming predominance of Mexicans in the flow of undocumented aliens (at least 60% are Mexicans, according to most estimates)
   (b) The desirable characteristics of most Mexican migrants, by comparison with migrants from other sending countries (studies show that Mexicans remain in the U.S. for shorter periods of time, make less use of tax-supported social services, and because of their lack of education, specialized job skills and English language competence are less likely to compete successfully with native American workers for higher-paying jobs)
   (c) Our historic, "special" relationship with Mexico
   (d) The severity of the current economic crisis in Mexico, and hence the need for a temporary worker program to ameliorate the hardship and economic dislocations which would result from an effective law prohibiting U.S. employers from hiring undocumented aliens.

(8) To meet the high demand for temporary worker visas, the visa-issuing capacity of existing U.S. Consular offices in Mexico would have to be expanded and new Consular offices should be established in principal source areas for undocumented aliens, particularly in the states of Jalisco, Guanajuato, Michoacán, Aguascalientes, Chihuahua, Durango, Sonora and San Luis Potosí. No visas should be issued along the border itself, to avoid a "pile-up" of visa seekers in close proximity to the U.S., who may be tempted to emigrate illegally or to remain for long periods in Mexican border cities if visas cannot be obtained.

RATIONALE

The main benefits of the proposed system of temporary worker visas could be summarized as follows:

(1) By regulating the entry of Mexican labor it will serve to bring within the law a large proportion of alien participation in the U.S. labor market, thus increasing public confidence in our legal system and enabling alien workers to seek legal redress of grievances against U.S. employers.

(2) It will significantly reduce the volume of illegal immigration from Mexico. Those who currently enter the U.S. illegally will have strong incentives to seek temporary worker visas:

(a) Such visas will eliminate the need to pay "coyotes"--professional smugglers of alien workers--for assistance in illegal border crossings. One recent study found that 41% of undocumented Mexican aliens found it necessary to use coyotes during their most recent trip to the U.S., most of them paying between $150 - $225 for their services.

(b) The proposed system would eliminate the physical risks involved in unassisted border crossings in sparsely populated areas.

(c) It would reduce the risk of economic exploitation and other abusive practices by U.S. employers (e.g., reporting undocumented alien employees to the INS to avoid paying them at the end of a job).

(3) It will reduce the incentive for U.S. employers to hire undocumented aliens, particularly if an employer sanction law with severe financial penalties is enacted. If such sanctions are imposed, U.S. employers will have a strong incentive to hire legal temporary workers rather than undocumented aliens, even if the cost of legal alien labor is somewhat higher.

(4) A key feature of the proposed system is its avoidance of pre-arranged contracts between U.S. employers and alien workers. This differentiates it from the former "bracero" program of contract labor, as well as the current system of "H-2" visas, both of which have had the effect of tying the alien worker to a particular U.S. employer who solicited his admission to the U.S. as a temporary worker. There is great danger of exploitation under this type of temporary worker program.

By eliminating pre-arranged contracts, the proposed system would foster free-market competition among U.S. employers for alien labor. The absence of contracts may tempt some employers to commit certain abuses, and an appropriate mechanism would have to be established to monitor exploitative employer practices; but all experts agree that a program of worker-initiated visas would pose far less danger of exploitation than an employer-initiated system.

(5) The proposed issuance of visas through U.S. Consulates in Mexico will also reduce exploitation by eliminating "middlemen" on the Mexican side. One of the worst abuses committed under the earlier "bracero" program was the extraction of bribes by Mexican authorities and others at the local and state levels who were involved in recruiting labor for the program.

(6) The proposed system will benefit U.S. workers as well as aliens, since

the use of legal alien labor has a less depressing effect on wage scales and working conditions than the use of undocumented alien labor.

(7) It would enable U.S. employers to meet legitimate work force needs, particularly for seasonal labor.

(8) It would keep open a critically important "safety valve" for Mexico, and cushion the impact of an effective U.S. employer sanction law on the Mexican economy.

(a) Even if the proposed employer sanctions law proves to be no more than 50% effective, the loss of U.S. employment opportunities for undocumented aliens is likely to cause economic dislocations and human suffering on a massive scale within Mexico. The Mexican Government lacks the resources that would be necessary to ameliorate this impact, and the Mexican economy is incapable of absorbing hundreds of thousands of workers who would otherwise be employed in the U.S.

(b) Mexico is currently experiencing its most serious economic crisis since the 1930's. A 50% currency devaluation occurred in September, 1976; inflation is currently running in the 30-40% range; rural unemployment is well over 30%. In 1976, economic growth slowed to 2%, while population continued to increase at a rate of 3.5% per year. The IMF has imposed a severe austerity program to curb inflation, which will reduce government spending for social welfare programs and exacerbate the unemployment problem.

(c) A severe reduction in the remittances received from Mexican workers employed in the U.S.—estimated by one study at $3 billion or more per year--would add a major new dimension to Mexico's economic crisis and dim the prospects for recovery. A complete cut-off in remittances would nearly double Mexico's projected balance-of-payments deficit.

(9) The proposed system of temporary worker visas will improve the chances for passage of other parts of the program recommended by the Administration's task force on undocumented aliens when it reaches Congress. Senator James Eastland has twice before blocked passage of an employer sanction law which did not make provision for temporary certification of alien workers, and can be expected to do so again if this is not part of the legislative package. Congressional resistance stemming from protests by employers' organizations opposed to an employer penalty law could also be undercut partially by a temporary worker visa program.

(10) Since no formal agreement between the U.S. and Mexican governments would be needed to implement the proposed system, it would be politically advantageous to the Mexican Government. Any new temporary worker program--even one which excludes the exploitative features of the former

"bracero" program--will draw criticism from nationalistic elements and the Mexican left. Such criticism would not be directed at the Mexican government if it were not required to enter into a formal agreement with the United States to implement the program.

There should, of course, be full consultation with the Mexican Government before any temporary worker program is announced publicly. If properly explained, the proposed program should enjoy the enthusiastic support of Mexican officials, especially in the current context of economic crisis within Mexico.

A temporary worker program may also assist the Mexican Government in dealing with the domestic political repercussions of other parts of the Administration's policy on undocumented aliens (particularly the employer sanctions law and the sharp increase in INS enforcement activities along the border), which are likely to be viewed by large sectors of the Mexican population as a form of economic aggression by the U.S. against Mexico.

Recent contacts with several high-level officials of the Mexican Government strongly suggest that a U.S. policy to deal with the undocumented alien problem by restricting employment opportunities in the U.S. ("closing the door," as one Mexican official put it) while providing no compensatory measures such as a temporary worker program will be viewed as a betrayal of the President's recent promise to Mexican President José López Portillo to guarantee more "just" economic treatment of Mexico by the United States.

(11) If unanticipated adverse effects within the U.S. were detected, the proposed system could be curtailed or terminated simply by ceasing to issue visas through U.S. Consulates.

OBJECTIONS TO THE PROPOSED SYSTEM

(1) How do we know that temporary workers will return to Mexico?

The objection most likely to be raised to the proposed system of temporary worker visas is that most of the visa holders will overstay their visas and settle permanently in the U.S. Existing studies provide impressive evidence that this is not likely to occur:

(a) The temporary (cyclical or seasonal) character of most Mexican migration to the U.S. has been thoroughly documented. The demand for Mexican labor in U.S. agriculture and many non-agricultural enterprises such as hotels, motels and construction firms fluctuates seasonally, and the volume of migration from Mexico (both legal and illegal) changes from month to month, at least partly in response to this fluctuation in employer demand.

(b) All existing studies show that undocumented Mexican aliens return to Mexico after relatively short periods of employment in the U.S., either because their temporary jobs have ended, or because they wish to be reunited with family members in Mexico, or because they must return to Mexico in order to retain jobs or land in their home community. Many employers in rural areas of Mexico give their workers leave from their jobs during the "dry" season to permit them to seek temporary employment in the U.S. Studies show that most Mexican migrants to the U.S. resume their regular jobs in Mexico upon returning from the U.S.

Among 1,000 undocumented Mexican aliens interviewed in a recent NIH-sponsored study, 54% had worked in the U.S. for 4 months or less during their most recent trip to the U.S.; only 11% had worked in the U.S. for more than 1 year before returning to Mexico. Evidence from this and other studies indicates that the vast majority of Mexican workers would abide by the six-month time limitation on their temporary worker visas.

(c) Existing studies show that most Mexicans who migrate illegally to the U.S. have never seriously considered the possibility of remaining there permanently. When undocumented Mexican aliens interviewed in one recent study were asked, "If you could get [legal entry] papers, would you like to live permanently in the U.S., or would you prefer to continue living in Mexico and working in the U.S. from time to time?", 74% reported that they preferred the latter arrangement.

(d) Experts estimate that those undocumented Mexican aliens who actually settle permanently in the U.S. are outnumbered by a margin of at least 10 to 1 by Mexicans who maintain a pattern of seasonal or "shuttle" migration. The proposed program of temporary worker visas would have the effect of encouraging the existing, temporary character of Mexican migration to the U.S., while discouraging permanent settlement. It creates an attractive option for those who do not want permanent legal resident status, but who must have access to U.S. employment opportunities to maintain their families.

(2) Will temporary workers "compete" successfully with native American workers for jobs?

U.S. labor organizations are likely to argue that legal temporary alien workers will compete "just as effectively" against U.S. workers as undocumented aliens. There is little evidence to support this contention.

(a) Thus far there is no direct evidence of large-scale displacement of native Americans by undocumented Mexican aliens. In most cases the jobs held by such aliens are the least desirable in the U.S. labor market: They involve dirty, often physically punishing tasks, low wages, long hours, low job security, and little chance for advancement. Existing studies point out that few native Americans care to compete for these jobs, since in most states one can receive more income from welfare benefits than from working at a job of the type customarily held by undocumented Mexican aliens.

(b) The risk of displacement of native workers by Mexicans entering under the proposed system of temporary worker visas is even less, since their possible job tenure would be limited to less than six months, and because the wage scales that would be acceptable to legal temporary workers would approximate the wage levels demanded by native workers, at least within the more desirable job categories.

(c) There will undoubtedly be efforts in the Congress to restrict temporary workers to agricultural enterprises, on the grounds that they would be less likely to displace native workers in that sector of the labor market than in other sectors. Such restrictions would be extremely difficult to enforce, since there are many non-agricultural employers who have legitimate work force needs that cannot be met with domestic labor, and because those Mexican workers who are accustomed to working in non-agricultural enterprises would resist being restricted to low-paying jobs in the agricultural sector. These workers would continue to migrate illegally if temporary worker visas were limited to agricultural employment.

(3) Will the proposed system of temporary worker visas increase illegal immigration from Mexico?

It is clear that the proposed system will not bring illegal immigration to a halt, unless the quota of visas is set extremely high and awareness of the temporary visa system is pervasive among the Mexican population. Many economically desperate Mexican peasants who cannot obtain a temporary worker visa will continue to seek employment in the U.S. as undocumented aliens; but the prospect of obtaining a visa at some point in the near future may deter substantial numbers of Mexican workers whose economic needs are less acute from emigrating illegally. Those who do succeed in obtaining visas will, of course, drop out of the flow of undocumented aliens. If implemented at the recommended level, the proposed system would reduce this flow by at least one-third during its initial year of operation. The amnesty component of the program proposed by the Administration's task force on undocumented aliens is far more likely to promote illegal immigration than the temporary worker visa system proposed here.

(4) Will the proposed system be too costly?

As noted above, the system would require a considerable expansion of the visa-issuing capavity of U.S. Consular offices in Mexico, as well as the establishment of new Consular offices in principal areas of origin for undocumented aliens. However, the costs involved will be minimal by comparison with the cost of the law enforcement resources needed to apprehend undocumented aliens entering the U.S. at current and foreseeable rates, in the absence of a temporary worker visa program.

PUBLIC ANNOUNCEMENT

It is imperative that in the public announcement of the proposed system of temporary worker visas, as well as in prior consultations with key members of Congress and Mexican authorities, great care be taken to differentiate it from the earlier "bracero" program of contract labor and from the current H-2 system of temporary worker visas.

Given the potential for exploitation under "bracero" and H-2 - type programs, there will be strong opposition to any system which seems to be modeled on these earlier programs. Careful explanation of the differences is essential to favorable Congressional action as well as to acceptance of the new system by the Mexican authorities and population.

23.

II

96TH CONGRESS
1ST SESSION

S. 1427

To amend the Immigration and Nationality Act to establish a temporary worker's visa program between the United States and Mexico.

IN THE SENATE OF THE UNITED STATES

JUNE 27 (legislative day, JUNE 21), 1979

Mr. SCHMITT (for himself, Mr. HAYAKAWA, and Mr. GOLDWATER), introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

A BILL

To amend the Immigration and Nationality Act to establish a temporary worker's visa program between the United States and Mexico.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "United States-Mexico Good Neighbor Act of 1979".

FINDINGS

SEC. 2. The Congress finds that—

(a) strong economic and political cooperation between the United States and Mexico will benefit not only the people of these countries, but will also help to eliminate western hemispheric tensions;

(b) the root cause of illegal migration from Mexico into the United States is the lack of reasonable alternatives for economic well-being in Mexico relative to those in the United States;

(c) the mutual benefit of past economic cooperation through legal worker programs and investment opportunities is well documented;

(d) in order to eliminate the present large and uncontrolled influx of undocumented workers a system of temporary legal admissions should be established;

(e) the vast majority of jobs that will be taken by Mexicans are in the agricultural and service industries where jobs are not now greatly in demand by American workers;

(f) many of the short-term economic needs of Mexicans and the short-term labor needs of American agricultural and service industries can be met by a temporary worker visa program for Mexicans seeking temporary employment in the United States;

(g) the value to Mexico of temporary employment of Mexican workers in the United States is in the direct flow of dollars into its economy and in the increase in skills within its labor force;

(h) a program of temporary worker visas would encourage the existing temporary nature of most Mexican migration into the United States;

(i) attempts to seal our vast border with Mexico to the flow of migrants are doomed to failure and only increase the exploitation of such workers by smugglers and unscrupulous employers;

(j) employer sanctions against the hiring of illegal Mexican migrants could result in discrimination against Hispanic Americans and/or in an unprecedented national identification system; and

(k) it is necessary to establish a legal framework for Mexican labor in the United States in order to harmonize the use of such workers, to prevent abuse of them by smugglers and unscrupulous employers, to better protect American workers from unfair competition, to reduce the flow of illegal migrants, and to permit a better understanding of the scope of the opportunities and problems related to Mexican workers in the United States and Mexico.

ESTABLISHMENT OF VISA PROGRAM

SEC. 3. Section 214 of the Immigration and Nationality Act is amended by adding the following new subsections at the end thereof:

"(e)(1) The Attorney General, in consultation with the Secretary of State, shall by regulation establish a program for the admission as nonimmigrants into the United States under section 101(a)(15)(M) of Mexican nationals who desire to temporarily perform services or labor in the United States. The regulations shall establish methods for establishing monthly and annual numerical quotas for the issuance of temporary worker visas in accordance with subsection (g). Visas shall be made available on the basis of such quotas to qualified applicants in the chronological order for which they are applied. Such visas shall permit each alien to temporarily perform services or labor within the United States for a period not to exceed 180 days during any calendar year, such period not necessarily a 180-day consecutive period. Such aliens shall not be required to obtain a petition of any prospective employer within the United States in order to obtain such a visa. Such visas shall not limit the geographical area within which the alien may be employed nor set any limitations on the type of employment for which the alien may be employed, except as provided in subsection (f).

"(2) Any alien who obtains a visa under the program established under paragraph (1) who (A) violates the restrictions with respect to the amount of time for which the alien is allowed to remain in the United States, or (B) violates any restriction required under subsection (f), shall be ineligible to obtain another visa under such program for a period of five years. Any alien who, after the inception of this program, enters the United States unlawfully shall be prohibited from obtaining a visa under such program for a period of 10 years.

"(f) The Attorney General, upon request from the Secretary of Labor, shall place specific restrictions on employment of aliens holding temporary work visas under this program at a specific business or agricultural site if employees or employers demonstrate that such aliens will displace available, qualified, and willing domestic workers. The Secretary of Labor shall establish the criteria under which such restrictions may be requested.

"(g) When appropriate, the Attorney General shall seek the assistance of the Secretary of Agriculture, the Secretary of Commerce, and the Secretary of Labor in establishing the regulations under subsection (e), and in computing the annual and monthly numerical quotas for temporary worker visas, based upon the number of seasonal or cyclical workers sought by employers in the United States. In computing such quotas, the Attorney General shall also consider historical needs, availability of domestic labor, and the projected needs of prospective employers.".

UNITED STATES CONSULATES IN MEXICO

SEC. 4. (a) The Secretary of State is authorized to take such steps as are necessary in order to establish and expand the United States Consulates in Mexico in order to implement the program established in section 214 (e), (f), and (g) of the Immigration and Nationality Act, as added by section 3 of this Act.

(b) The Secretary of State shall coordinate with appropriate officials of Mexico in order to insure maximum awareness in Mexico of the nature and restrictions of the program established in section 214 (e), (f), and (g) of the Immigration and Nationality Act, as added by section 3 of this Act.

(c) The Secretary of Labor shall undertake to insure, to the extent practicable, that the nature and restrictions of the programs established in section 214 (e), (f), and (g) of the Immigration and Nationality Act, as added by section 3 of this Act are known to aliens of Mexican citizenship residing in the United States.

NONIMMIGRANT CATEGORY

SEC. 5. Section 101(a)(15) of the Immigration and Nationality Act is amended by adding at the end thereof the following:

"(M) a Mexican national who has no intention of abandoning his or her residence in Mexico who is coming to the United States for a period of not to exceed six months during any calendar year, for an indefinite number of such periods, to temporarily perform services or labor.".

EFFECT OF DEPORTATION

SEC. 6. Section 212(a) is amended—

(1) by inserting before the semicolon at the end of paragraph (16) a comma and the following: "except that the Attorney General shall not consent to the reapplying for admission of an alien described in section 101(a)(15)(M)"; and

(2) by inserting before the semicolon at the end of paragraph (17) a comma and the following: "except that the Attorney General shall not consent to the applying or reapplying for admission of an alien described in section 101(a)(15)(M)".

PROHIBITION ON ADJUSTMENT OF STATUS UNDER TEMPORARY WORKER VISA PROGRAM

SEC. 6. Section 245(c) of the Immigration and Nationality Act is amended—

(1) by striking out "or"; and

(2) by inserting immediately after "section 212(d)(4)(C)" a semicolon and the following: "or (4) any alien described in section 101(a)(15)(M)".

REPORT TO CONGRESS

SEC. 8. The Attorney General shall report semiannually to the Congress on the temporary worker visa program established in section 214 (e), (f), and (g) of the Immigration and Nationality Act, as added by section 3 of this Act, and shall include in that report a summary of the number of visas issued under the program, the effectiveness of the program, enforcement problems related to the program, and any recommendations for legislative change in the program.

BILATERAL ADVISORY COMMISSION

SEC. 9. It is the sense of the Congress that the President should negotiate with the appropriate officials of the government of Mexico to establish an Advisory Commission on the Mexico-United States Temporary Worker Visa program to consult with and advise the Attorney General in establishing the regulations, and in computing the monthly and annual numerical quotas, for the temporary worker visa program established under section 214 (e), (f), and (g) of the Immigration and Nationality Act, as added by section 3 of this Act.

AUTHORIZATIONS

SEC. 10. There are authorized to be appropriated such sums as are necessary to carry out the provisions of this title.

24.

96TH CONGRESS
1ST SESSION

H. R. 326

To amend the Immigration and Nationality Act to facilitate the admission of aliens for temporary employment.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 15, 1979

Mr. FISH introduced the following bill; which was referred to the Committee on the Judiciary

---

A BILL

To amend the Immigration and Nationality Act to facilitate the admission of aliens for temporary employment.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 101 (a) (15) (H) (ii) of the Immigration and Nationality Act (8 U.S.C. 1101 (a) (15) (H) (ii)) is amended to read as follows:

"(ii) Who is coming temporarily to the United States for a period not in excess of one year to perform other temporary services or labor, if the Secretary of Labor has determined and certified to the Attorney General that sufficient domestic workers who are able, willing, and qualified are not

I—O

available at the time and place needed to perform the work for which such workers are to be employed and the employment of such aliens will not adversely affect the wages and working conditions of workers similarly employed: *Provided*, That within sixty calendar days of the date on which an employer files a request for such certification the Secretary of Labor shall (1) refer to the employer workers in the number desired, able and qualified, and who agree to present themselves to commence employment on the date and for the period specified, or (2) make and issue a certification as provided in this subparagraph, except that the period of time shall be twenty calendar days in the case of a request for workers to be employed in agriculture, as defined in section 3 (f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203 (f)), or to perform agricultural labor, as defined in section 3121 (g) of the Internal Revenue Code of 1954 (26 U.S.C. 3121 (g)): *Provided further*, That an employer who questions the qualifications of a worker referred to him by the Secretary of Labor shall be entitled to prompt review by the Secretary; such review shall consider written opinions and other evidence submitted by the employer. The Attorney

General may, upon receipt of a determination and certification by the Secretary of Labor as provided herein, extend the terms of an alien's admission for a period or periods not exceeding one year in the aggregate.".

25.

95th Congress
2d Session } COMMITTEE PRINT No. 20

ILLEGAL IMMIGRATION AND U.S.-MEXICAN BORDER CONTROL: ANALYSIS AND RECOMMENDATIONS

CRITIQUE OF ADMINISTRATION ADJUSTMENT OF STATUS PROPOSALS

SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP,
AND INTERNATIONAL LAW

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
NINETY-FIFTH CONGRESS
SECOND SESSION

AUGUST 1978

Printed for the use of the Committee on the Judiciary

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CONGRESS OF THE UNITED STATES,
COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
Washington, D.C., June 2, 1978.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: As you know, I visited the U.S.-Mexican border, along with members of the staff of the Immigration Subcommittee to view, first hand, the problems faced there, as related to the overall illegal alien problem in the United States. Based on this inspection trip, and my experience on the subcommittee, I wish to file the enclosed report detailing my findings and conclusions.

I trust this information will be helpful to you and other Members of Congress when we consider legislative proposals to deal with this most complex problem.

Sincerely,

HAMILTON FISH, Jr.,
Member of Congress.

6

ECONOMIC DISINCENTIVES; TEMPORARY DOCUMENTED WORKERS PROGRAM

It is obvious that the main reason aliens enter illegally into the United States, on their own or through efforts of smugglers, is to find employment. Study after study [1] has confirmed this basic fact. If jobs were not available, smugglers would have little, if any, market for their "merchandise". Aliens would have little reason for wanting to reside in the United States, with the possible exception of welfare and educational benefits available. Regarding such benefits, it is understood that other committees of the House have passed, or are currently working on, legislation designed to curb such access by illegal aliens.

On August 4, 1977, the President announced a multifaceted approach to deal with the undocumented alien problem. His message recognizes that the principal attraction to such aliens is an economic one.

It is not presently illegal to employ an alien who is in this country without lawful status, or one here legally but not entitled to work. Therefore, I fully agree that the keystone of any program to deal with this problem must be to impose sanctions against employers who hire persons illegally in this country or not authorized to work.

An integral part of the solution, and companion to employer sanctions, should be a provision to permit the admission of temporary workers when and where they are needed.

It is basic to an understanding of Mexican emigration that most illegal aliens come here to work. Legislation to prohibit their employment would hopefully dry up human smuggling. Many jobs now held by illegals will be taken by lawfully admitted aliens and citizens now unemployed. However, there will remain a need for temporary workers, such as during labor-intense periods of crop harvesting. If U.S. resident workers are Government-certified as not available to perform such work, temporary documented alien workers should be admitted to perform such work. Such workers would be admitted for temporary periods, under controlled circumstances.

The President in his message of August 4, 1977 called for "a comprehensive review of the current temporary foreign worker (H-2) certification program."

I fully agree that such a program is necessary. To accomplish this, I introduced H.R. 6022 on April 5, 1977 to improve the present system for admitting temporary workers.

If it becomes illegal to employ illegal aliens, there will develop legitimate needs for alien workers to come to this country. At the present time, with millions of undocumented aliens here who can now be legally employed, there is still a need for temporary alien workers, particularly in agriculture during labor-intense periods.

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[1] Preliminary Report of the Domestic Council Committee on Illegal Aliens, Executive Office of the President, Washington, D.C., December, 1976.

U.S. General Accounting Office, Wash., D.C., Reports dated July 31, 1973, February 4, 1975, May 16, 1975, September 8, 1975, July 15, 1976 and August 30, 1976.

Undocumented Aliens, A California Focus, State of California, Dept. of Justice, 1978.

Illegal Aliens: Analysis and Background, Congressional Research Service, U.S. House of Representatives, Committee on the Judiciary, Committee Print No. 5, 95th Congress, June, 1977.

Temporary workers are admitted annually to pick apples in the Hudson Valley of New York and the Shenandoah Valley in Virginia, to pick citrus fruit in Florida, and to work as lumbermen in the Northeast. In fiscal 1976, over 10,000 farm laborers were admitted as H-2 temporary workers.

Employer sanction legislation will hopefully reduce the influx of available workers. When this occurs, the need for alien workers, particularly temporary workers, will increase.

When legitimate needs for foreign workers arise, such workers can be admitted to our country within a workable program. The El Paso District Director of INS last year admitted 807 H-2's to harvest an onion crop in Presidio, Tex. These workers did their job and all but a very few returned on their own to Mexico when their job was completed. The Government knew where they were employed, and could monitor their wages and working conditions to see that they were up to proper standards, and were not operating to disadvantage U.S. workers.

An ongoing program to allow temporary documented workers into this country could be made to work to the advantage of both the United States and source countries. Workers could be limited to a fixed period of time of admission, and if the job was not completed, another worker could be admitted to complete it.

Appropriate income tax should be withheld and workmen's compensation coverage should be provided to temporary workers. On the other hand, such workers would not need social security or unemployment compensation and these should be inapplicable.

There are several benefits which I see flowing from such a Temporary Documented Worker program.

(1) Alien workers would enter the United States legally, with the rights of any other person legally admitted. They would not be forced underground where they are (now) subject to exploitation because of their illegal status, but could retain their dignity while in the United States in legal status.

(2) They would enter based on a proven need for workers, not just to find work when and where available.

(3) The Government, which would certify the need for such a worker, will know when and where such worker is employed, and can monitor the conditions of employment assuring that OSHA regulations and the Fair Labor Standards Act are applied.

(4) At the end of their period of admission, they will return to their home countries with the wages they have earned, resulting in a benefit not only to themselves and their families but to their home countries as well.

26.

NATIONAL COMMISSION FOR MANPOWER POLICY
1522 K Street, NW, Suite 300
Washington, D. C. 20005

(202) 724-1646

May 1, 1979

Honorable Ray Marshall
Secretary of Labor
Washington, D.C. 20210

Dear Ray:

In 1978 you asked the Commission to look at the H-2 program (Temporary Admission of Foreign Workers) and to forward recommendations to you after assessing this aspect of our immigration policy in the larger context of the nation's changing employment structure. After discussions with Mr. Charles Knapp, we decided to focus on policy considerations and not become involved in highly technical administrative and legal dimensions which play so large a part in the program.

We were fortunate in being able to persuade Dr. Edwin Reubens, Professor of Economics, City University, New York, a long-time student of economic development in the third world and who more recently has worked on the flows of people, to undertake a special study of the H-2 program. A copy of his report is forthcoming, an earlier draft was provided to your staff.

The Commission earlier had sponsored a study and published a report by David North and Allen LeBel on Manpower and Immigration Policies in the United States, which had been distributed with a request for comments to the heads of the principal executive agencies of the federal government and the substantive committees of the Congress. Most of the recipients replied at length and indicated an interest in having the Commission continue its probe of these issues. When the Reubens' study became available a copy was sent to each of the above and a day-long seminar was arranged.

The seminar, held on March 23, 1979, was attended by agency representatives and carefully selected experts. The list of attendees and the agenda are attached together with my summary observations at the end.

The recommendations set out below have been derived from the Reubens' report, an analysis by the Commission's staff, and the inputs of those who attended the March 23 seminar. Because of timing, reorganization, and other considerations, I alone, as Chairman, assume responsibility for them; they cannot be viewed as the work of the Commission as a whole. Neither do they reflect the considered opinions of the representatives of the federal agencies who attended the March 23 seminar nor those of invited specialists, although they have been informed by both.

This is where I came out:

1. The small H-2 program for the temporary admission of foreign workers now in existence provides a useful element of flexibility in the nation's immigration policies which for the most part are not closely linked to the changing nature of the nation's employment issues. Permanent immigration into the United States has more to do with family reunion and asylum for refugees than to helping to meet the specific manpower needs of our dynamic economy.

2. The close linkage between foreigners and our labor market grows out of two facts: those who come as visitors and stay and work beyond the time when their visa has expired; and those who enter the country without appropriate documents, primarily for the purpose of seeking work. In terms of numbers these two categories are of an order of magnitude many times greater than the H-2 group.

3. Both the Administration and the Congress has been exploring the opportunities to improve control over the very large pool identified above in which connection it is possible to consider a much expanded role for the H-2 program. I advise strongly against such action, however, on the following grounds:

   a) The H-2 program is an employer-specific program and as such places the U.S. government in an exposed position to frequent challenges in the courts as to whether labor market conditions warrant the importation of foreign workers. Such a pattern of operation should not be deliberately enlarged.

   b) The H-2 program has many of the characteristics of the old Bracero program and the Chicano population is vehemently opposed to it being resurrected.

   c) There is something "addictive" to the more or less regular use of a supply of foreign workers. Employers fail to explore alternatives. Hence the dosage should not be expanded.

d) In the absence of substantial increases in its budget and staff, there is no reason to believe that the U.S. Department of Labor would be in a position to manage a much enlarged H-2 program even if theory and facts pointed to the desirability of such expansion, which they do not.

e) The assumption that a much enlarged H-2 program would make it possible, in the near or intermediate term, to substantially reduce the inflow of undocumented workers is highly problematic.

f) The continuing heavy dependence of selected farm employers on the H-2 program (for example, apple picking on the East Coast) and the growing demand for more foreign workers suggests that the DOL establish a longer range policy--three years or so--during which the dependent employer groups be placed on warning that they should find alternative sources of labor. This might be done by a declining allowance reinforced with a special tax. The U.S. government should not be a long-term partner in obtaining the basic labor supply for domestic employers.

4. During the course of the seminar the following issues surfaced. I am noting my reactions to what was said; however, I am no expert in these matters:

   a) The necessity of distinguishing the different dimensions of the undocumented worker problem as among the Texas border, California, the interior states, and the Northeast. It was generally agreed that Mexico was the source of not less than 60 percent of the total, possibly much higher. Two critical questions: What is known about the stream of undocumented persons from the Caribbean and Latin America via Mexico and via other routes? To the extent that this stream is substantial and growing the question of tightened border restrictions becomes that much more important. Further, the issue of amnesty is linked to this condition. If great numbers of "potential" undocumented workers are backed up biding their time to make the effort to enter the U.S., how they will read amnesty is important. If the numbers of such workers is modest the risks from amnesty are less.

b) It is unlikely that the U.S. will be able unilaterally to protect our southern border without the assistance, and possibly even with the assistance, of the Mexican government. Hence, all immigration issues affecting Mexico must be seen in the larger context of U.S. foreign policy. It would probably be advantageous to explore with the Mexican government whether desirable "trade-offs" are possible, such as increasing the ceiling on permanent immigration in return for some Mexican control over the undocumented.

c) The prospects for any near-term substantial lessening of pressure for emigration to the U.S. because of a substantial improvement in employment conditions in Mexico is highly unlikely, the prospective investment boom there notwithstanding. Hence, the U.S. must be cautious of how much the Mexican government can do to slow the outflow even if it were willing to try to do so.

d) The lack of access to social and health services for the children of the undocumented in the U.S. should be a matter of growing concern if we are to avoid breeding a whole generation of quasi-outcasts. The federal government, working with the key states in which the undocumented cluster should explore how these potentially serious "secondary" efforts can be moderated.

e) In the face of overwhelming pressures being exerted from south of the border for people to continue to seek temporary or permanent jobs in the U.S. and with such jobs being available by virtue of the preferences of U.S. employers (or usually an admixture of the two) it is unlikely, that any one or several approaches--employer liability, improved Social Security identification, tighter border controls, cooperative arrangements with the Mexican government, etc.--will significantly alter the flow in the absence of draconian interventions which at present do not have the support of the U.S. public. It may be best, as in the case of welfare reform and national health insurance, to take one step at a time recognizing that "total" answers cannot be developed.

f) Since the preference of U.S. employers for undocumented workers reflects their belief that they stand to gain from such action on the grounds of lower wages, sub-standard working conditions, higher productivity, less danger of trade union organization, a major alternative approach for the federal government to pursue is to step up substantially labor standards, inspections and controls. In this undertaking the trade unions should prove to be a potent ally.

g) The question was explored whether the U.S. should move to establish a large "guest worker" program along the lines that most European countries resorted to after World War II in the hope and expectation that such a program would reduce the inflow of undocumented workers. My first reactions are definitely opposed to such an approach on the grounds that the federal government should not become involved on a much larger scale in "regulated" labor market transactions; that such a program is not needed; and that even if it were introduced it might result in an addition to, rather than a substitute for, the undocumented.

5. It is my intention, as I informed the participants in the seminar, to make a copy of this letter available to them. I will request that they comment on any and all of the issues identified. As soon as the replies are in hand, I will consolidate the replies and make them available to you for your further consideration and guidance.

I hope that you and your staff will find Dr. Reubens' forthcoming report and this letter of help as you continue to seek better ways of dealing with these complex issues. If you think that the Commission can be of any further help please let me know.

Sincerely,

ELI GINZBERG
Chairman

Enclosures

Summary of a Seminar on Immigration and Employment Policies

March 23, 1979

Eli Ginzberg
Chairman
National Commission
for
Manpower Policy

For the first time in the experience of the National Commission for Manpower Policy I find myself unable to provide a summary for the day's discussion. The reason is self-evident. We were not able to reach agreement, not even to reach consensus, about the critical questions to be asked, much less how they were to be answered. Accordingly I must follow an alternative approach. The one I have chosen is to formulate a set of propositions about immigration and manpower policy, as reflected in today's discussion, which will seek to explain the underlying reasons for the wide differences among us. Further, speaking only for myself--and not as Chairman of the Commission--I will suggest the policy lessons that I draw from these differences. To keep my account sharp and focused I will set forth my several propositions without elaboration. You will be able to fill in the details:

1. The defects in the current operation of our immigration laws and administration cover a very wide range, from contributing to the worsening of employment conditions for U.S. citizens trapped in secondary labor markets to depriving the children of illegal immigrants of essential health and related services to their hurt and that of the larger society.

   But I suggested earlier and now repeat with emphasis that we may face at the present time--and possibly for some time to come--disagreements among the body politic over values, politics, economics, civil rights as they impinge on the immigration arena that make it unlikely, nay impossible, to reach the consensus required to write new laws and regulations that would improve the admittedly unsatisfactory conditions that exist and that in the absence of societal intervention will continue to exist.

But a policy of non-intervention need not necessarily be viewed as clearly inferior to one of intervention. We acknowledged that from many points of view the immigration reforms of 1965 contined many good points and it is not only possible, but likely, that if no clear-cut public consensus exists, recourse to legislation could result in losing the earlier gains without new ones being achieved. I submit that this danger exists not only in the field of immigration but also in other social conflict areas such as national health insurance and welfare reform. Difficult as it is to accept, there are times in the life of a democracy where it may be preferable to suffer the current, often seriously flawed, extant system than to venture upon significant legislative reforms without a preexisting coalition.

2. All policy alternatives must be viewed within the context of a grievous lack of reliable information, a gap which in the nature of the case is likely to remain wide no matter how large a research program is launched. Collecting information about illegal activities is, by nature of the inquiry, largely doomed to non-cooperation from the people best positioned to provide the required inputs. Consider what we don't know about the size and distribution of earnings and other income from illicit and illegal activities, a subject that has long interested me.

   In the face of such an appalling lack of reliable information--in which the estimates of the total number of illegals vary by 300 to 400 percent--it seems to me to be the better part of wisdom (and caution) to proceed modestly in recommending new, especially radical forms of societal intervention. The consequences of our new proposals may turn out to be substantially different from what we anticipate. In such a problematic situation we should move with caution and restraint. I follow that school of medicine which believes that one must take care not to make bad worse in an effort to make it better.

3. Despite the paucity of reliable data the conferees concluded that the proportion of Mexicans among the illegals could not be less than 60% and might possibly approach 90%. This high ratio underscores the importance of formulating immigration policy with an eye to the values of the Chicano population on the one hand and the Mexican government and people on the other. Neglect of either will result in inevitable failure.

Clearly U.S.-Mexican relations leave considerable to be desired and in the face of our worsening oil crisis it is essential that the U.S. do what it can to improve the short and long term relations with our Southern neighbor. Further constraints that must be faced are the high underemployment and unemployment rates in Mexico and the near certainty that they will remain high over the next decade or two, no matter what development policy Mexico pursues. Accordingly, the pressure on Mexicans to cross the border for work and income will remain high, come what may.

Even if it were possible for the U.S. and Mexican governments to work out some complex arrangements involving people, dollars, oil and border cooperation it is questionable whether the Mexican government, faced with such severe internal pressures could play an active role in helping to seal its border. And in the absence of such cooperation it is doubtful that the U.S. acting alone could succeed.

A possible alternative might be for some special status for the "border area." People and goods now flow back and forth. A serious effort might be made to increase U.S. production south of the border with an aim of cutting the large flows of Mexicans to the U.S. Whether such a radical "free zone" would be feasible and whether it would alleviate rather than worsen the current situation would have to be carefully appraised prior to starting to move down this route.

4. Important as the area on both sides of the Mexican-U.S. border is, the fact remains that the question of illegals in Texas differs substantially from that prevailing in California, the interior cities, and the Northeast. Hence the formulation of sound policy becomes that much more complex because while certain aspects of the problem may be common to all flows, many others are quite distinct. In the absence of micro-labor market studies we are likely to make serious misjudgments.

5. With respect to the H-2 issue the beginning of wisdom is recognized that farmers are a vocal political force and that one should not tangle with them unless one must, because of their ability to weaken those in office who oppose them. It seems to me therefore the better part of wisdom for the Secretary of Labor to suffer with the present awkward program rather than to attempt any radical

revision that would bring these small but powerful special interest groups down on him. On the other hand, he would be well advised to try to hold the line since whatever accommodations he makes are likely to lead to further demands under the rubric, "what have you done for me lately."

6. One of the issues that was touched upon in our discussions but which remained obscure was the back-up in Central and South America of potential immigrants to the U.S. It makes a great deal of difference whether we assume that there may be several hundred thousand awaiting an opportunity to come to the U.S. or whether the figure is placed in the multi-millions. From what little I know about conditions in the Caribbean, I would assume that the proportion of locals interested in coming North, at least for a time, is considerable. But the critical pool, about which I know very little, are the much larger countries of Latin America. And the problem is further complicated by the fact that much of their flow is via Puerto Rico and Mexico into the U.S. At a minimum, U.S. policy should be cautious about sending out any new signals that might be misinterpreted by these potentials and that could accelerate the inflow.

7. The last point that emerged was the urgent need for more federal-state cooperation and more inter-federal agency cooperation to reduce the neglect that the many children of illegals now suffer out of the fear of their parents to seek public services when they need them. It is improper, nay indecent, that our affluent economy and society should not be able to prevent such inhumanity.

The foregoing seven propositions can be summarized as follows:

---Until current disagreements are narrowed, no effort should be made to undertake a large-scale revision of the immigration laws and procedures.

---The foregoing approach is reinforced by the absence of reliable information, the improvement of which will inevitably be slow.

---Immigration policy in the future must be viewed within the context of U.S.-Mexican foreign policy improvement.

---One must avoid generalizing about the problems of illegals in different areas of the country.

---With respect to H-2 it is probably preferable for the Secretary of Labor to live with the present system.

---The potential inflow from the Caribbean and Latin America needs to be more carefully assessed.

---It is highly desirable for U.S. (federal and state) governments to facilitate the receipt by children of illegals of basic health, welfare, and educational services.

27.

GUESTWORKERS: LESSONS FROM WESTERN EUROPE

PHILIP L. MARTIN and MARK J. MILLER*

This article appraises the postwar guestworker programs in France, Switzerland, and the Federal Republic of Germany in light of the proposal that a similar program be adopted in the United States. The authors agree that these programs provided significant short-term economic benefits in meeting the labor shortages experienced in Western Europe until recently. These programs also created several serious problems, however, leading the authors to conclude that a large-scale American temporary worker program (1) may reduce but not end illegal immigration; (2) will evolve into a resident, not short-term, worker program; (3) is likely to produce discrimination against migrant workers; (4) will not improve U.S. relations with labor-source countries; and (5) will exacerbate the employment problems of American minorities.

A LARGE-SCALE temporary work program for aliens, similar to European guestworker programs, has recently been advocated as one answer to the U.S. "illegal alien problem."[1] This study seeks to provide a better understanding of the policy options open to the United States, and their likely consequences if adopted, on the basis of the Western European experience with guestworker policies.[2] Since over three-quarters of all alien workers and their dependents in Western Europe live in France, Switzerland, and the Federal Republic of Germany, the scope of comparison is limited in the interest of parsimony to the three major European importers of alien workers.

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*Philip L. Martin is an assistant professor in the Department of Agricultural Economics at the University of California-Davis and Mark J. Miller is an assistant professor in the Department of Political Science at the University of Delaware. This article is a product of research supported by the German Marshall Fund of the United States. The authors appreciate the comments of David Yeres. This is Giannini Foundation Paper 560.

[1] Charles Keely and Edwin Reubens are two of the more prominent exponents of an expanded American guestworker policy. See Charles B. Keely, *U.S. Immigration: A Policy Analysis* (New York: Population Council Public Issues Paper, 1979) and Reubens's letter to *The New York Times* (April 22, 1979).

[2] The term, guestworker policy, refers to governmental measures that permit aliens to be introduced into the labor market with the expectation that the aliens will not become citizens and will eventually return home. Guestworker is a literal translation of the German word *Gastarbeiter* and has a specifically German connotation. Many Frenchmen and Swiss would object, undoubtedly, to a description of their alien work forces as guestworkers because of the negative connotation that this term has taken on. The most frequently used terms in France and Switzerland are *travailleur etranger* and *Fremdarbeiter*, respectively. These terms are best translated into English as foreign worker. For the purposes of this study, however, the terms foreign worker and guestworker will be used interchangeably even when referring to Switzerland and France.

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The Formation of Postwar Guestworker Policies

The major legacy of the interwar years for the question of migration was a generalized fear of return to the massive unemployment of the Great Depression. This fear was one of the major reasons why alien workers could be conceived of only as a temporary complement to the indigenous work force. It was assumed that alien workers would return home in times of recession as most had in the 1930s. Western European expectations concerning temporary alien workers were, in a sense, confounded by their own remarkable postwar economic development.

The postwar phenomenon of massive recourse to guestworkers occurred earliest in Switzerland. Swiss guestworker policy emerged unplanned as a series of pragmatic, stop-gap responses to persistent labor shortages.[3] Although generally uneasy over the introduction of guestworkers, Swiss labor did not oppose the policy. The hallmark of Swiss policy since its inception has been that guestworkers are a complementary work force providing manpower elasticity in periods of economic expansion as well as a buffer for indigenous labor in periods of recession. Swiss officials never have considered their insular, yet pluralistic, mountain confederacy to be an immigration country.[4]

Germany, too, did not consider itself to be an immigration country. The influx of guestworkers into Germany took on massive proportions only after the construction of the Berlin Wall in 1961.[5] Yet, the advent of German guestworker policy in the postwar era can be traced back to 1955 when several thousand Italian farmworkers were granted temporary work permits.[6] As in Switzerland, German business, labor, and public officials envisaged the guestworker program as an ephemeral measure designed to alleviate economically harmful labor shortages.

The major comparative difference between France and its eastern neighbors in the realm of migration is that France considers itself to be an immigration country and has a tradition of assimilation. Due to the comparatively early decline in the French birth rate, French governments long have worried about what they call their "demographic insufficiency." In the years immediately following World War II, several French governmental agencies recommended that massive immigration be promoted as part of a long-term manpower and repopulation strategy.[7] Thus, permanent, instead of temporary, labor migration was to be officially encouraged.

France, though, always has conceived of its policy on this subject as one of selective immigration. The government regarded "unassimiliable" elements of the alien work force as temporary.[8] When a huge influx of foreigners occurred in the 1960s, most of the migrants were not introduced through the regular channels of the government immigration program. Rather, the influx was a largely unorganized response to attractive employment opportunities in France. Most of the migrants came not as permanent residents but as temporary workers, as in the Swiss and German cases.

The formation of guestworker policies in Western Europe, then, was largely a by-product of postwar economic expansion.

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[3] Denis Maillat, "L'immigration en Suisse. Evolution de la politique d'immigration et consequences economiques," in Philippe J. Bernard, ed., *Les Travailleurs Etrangers en Europe Occidentale* (Paris: Mouton and Co., 1976), pp. 105 – 119.

[4] Recently Swiss officials have begun to consider facilitating naturalization as a partial solution to their guestworker problem. Naturalization barriers for migrant children born in Switzerland, most notably, have been eased. See Federation suisse des bourgeoises and Commission Federale Consultative pour le Probleme des Etrangers, *Les Etrangers dans la Commune* (Bern: Swiss Government, 1979), pp. 60 – 61.

[5] Over the previous decade, the expanding manpower needs of the German economy largely had been satisfied by repatriated ethnic Germans. Stephen Castles and Godula Kosack, *Immigrant Workers and Class Structure in Western Europe* (London: Oxford University Press, 1973), p. 39. It was only in 1978 that Chancellor Schmidt deemed the long-standing principle, "Deutschland ist kein Einwanderungsland" no longer appropriate.

[6] *DGB Report*, Vol. 1, No. 2 (1977), p. 12.

[7] Georges Tapinos, *L'immigration etrangere en France 1946-1974* (Paris: Presses Universitaires de France, 1975), pp. 13 – 14.

[8] Ibid., pp. 18 – 19. "Unassimiliable" foreigners were mainly North African while Italians, Portuguese, and Spaniards were considered "assimiliable."

With the limited exception of the French case, guestworker policies were a response to the exigencies of the economy. The inauguration of guestworker programs was not preceded by great public policy debates. Rather, little significance was attached to these policies. Guestworker programs were initiated in spite of a public climate generally hostile to the idea of bringing in foreign workers. However, the assumption that these workers would only be temporary and, therefore, could be sent home in the event of an economic downturn, allayed the fears of labor.

The inauguration of guestworker policies, of course, was predicated upon an abundant supply of foreign workers who would be willing to leave their homelands. As labor reservoirs in the labor-exporting countries closest to Western Europe dried up, foreign workers came increasing distances, both physically and socio-culturally. When guestworker policies were being formed, however, little thought was given to potential integration problems. To paraphrase the noted Swiss author Max Frisch, the Western Europeans asked for a temporary work force, but they got men.[9] This fundamental miscalculation became obvious through time with the implementation of guestworker policies.

Administrative Structures and Policy Implementation

Employers in Switzerland were permitted to contract directly with foreign workers, who were then granted a work and residency permit. Up to 1960 practically all foreigners with valid contracts were given residency authorization. In the early 1960s, however, the rapid increase in the number of guestworkers led to fear of loss of national identity and the government hands-off policy came to an end. Increasingly, xenophobic elements in the Swiss population and organized labor demanded that the government intervene to stabilize and then reduce the foreign population, which they judged to be excessive.

In the face of a national referendum against its policies in 1970, the Swiss Federal Council declared a ceiling on the total number of residency permits that would be authorized and established yearly quotas of residency permits for each canton. Still, the number of guestworkers grew as the increasingly large number of foreigners who had been there over ten years came to be regarded as permanent residents and were therefore subtracted from the yearly quotas. In 1975 the Federal Council decreed that the quotas of annual work permits allotted to each canton would be cut by two-thirds.[10] This policy initiative had the desired effect of reducing the number of foreigners employed; but the foreign share of the total population remained steady as the arrival of guestworker dependents compensated for the drop in foreign workers.

In contrast to the Swiss, the French and Germans gave monopolies over the introduction of foreign workers to governmental agencies, the National Immigration Office and the Federal Labor Institute, respectively. Employer requests for guestworkers were processed by these agencies, which then recruited workers abroad. Through bilateral treaty arrangements, satellite offices were established in labor source countries. Guestworkers were selected from lists of names submitted by labor officials in the countries of recruitment. The transportation of the workers was arranged by the two governments as part of the fee paid by employers.

Unlike the French, the Germans have never permitted the "regularization" or *post facto* legalization of false tourists. German policy was predicated upon the notion that guestworker employment should be a function of the labor market situation and economic conditions.[11] Thus, there were no efforts to place yearly limits on the numbers of foreigners hired until 1973 when a ban was placed on all further recruitment.

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[9] Cited by Klaus Lefringhausen, "Wirtschaftsethische Aspekte fuer lokale Aktionen," in Rene Leudesdorff and Horst Zillessen, eds., *Gastarbeiter-Mitbuerger* (Gelnhausen: Burckhardthaus, 1971), p. 192.

[10] Systeme d'Observation Permanente des Migrations (SOPEMI), *1975 Report* (Paris: OECD, 1975), p. 45.

[11] Reinhard Lohrmann, "La Reglementation de l'Immigration etrangere en RFA et ses implications politiques," in Bernard, *Les Travailleurs Etrangers en Europe Occidentale*, p. 357.

The year 1970 marked an important step in the evolution of German guestworker policy in respect to the welfare of migrants. For the first time, the government recognized that the foreign workers were something more than a "temporary" work force. This acknowledgment was accompanied by a broad program to foster the social integration of these workers. In part due to the growing number of foreign trade unionists, organized labor led resistance to the efforts of conservatives to enforce the original "temporary" spirit of the guestworker program. The governmental decision to halt the guestworker program in 1973 fundamentally reflected labor's demands that the further introduction of guestworkers be restricted while the lot of those already in Germany be improved.

The postwar evolution of French policy implementation in the area of migration breaks down into several distinct phases. In the first decade after the war, the French aim to promote selective immigration was largely frustrated by their granting Algerian Arabs increased access to the labor market of metropolitan France starting in 1947.[12] Cumbersome procedures of the National Immigration Office (ONI is the French acronym) and the bad reputation that it earned for its poor reception of migrants led employers to try to circumvent the ONI channel. Many employers began hiring illegal aliens or "false tourists" on the spot. ONI deficiencies led to a vicious circle of irregular labor introduction and *post facto* regularization, which prevailed during (and contributed to) the enormous foreign worker influx of the 1960s. By 1968, fully 82 percent of all officially registered migrant workers had their status legalized *de facto*.[13] In effect, despite the semblance of an organized program for labor migration to France, a *de facto* policy of benign neglect was followed by the government. Labor migration generally was uncontrolled and spontaneous.

It was above all the festering social conditions of foreign workers, aggravated by serious outbreaks of racial violence straining French diplomatic relations, that prompted a two-pronged governmental reform program in the early 1970s. First, the government endeavored to assert its control over the migratory flux by ending its practice of *post facto* regularization. Second, the government announced a number of programs that were to ameliorate the social and economic status of migrants. Concurrently, however, the government modified its viewpoint toward immigration: It no longer assumed that assimilation of foreign workers was in the long-term interest of France. Thus, the government began to promote a policy of migrant return to the homelands, an approach that borders on the notion of rotation in explicit guestworker policies.

Several problems plagued implementation of all three of the guestworker programs studied. First, Western Europeans had no inkling of the administrative undertaking the programs would entail. As problems grew, new demands by societal interest groups were made on policy makers. The tightly circumscribed number of interest groups that constituted the critical audience appraising the performance of administrators in the first years of guestworker programs had grown to encompass many major social interest groups by the 1970s. The development of comprehensive coordination and consultation organisms through the years illustrates the unanticipated problems of complex administration involved. These organisms eventually brought together trade union, business, civil rights, social welfare, and religious representatives, plus officials from virtually all levels and branches of government, in the effort to find solutions to guestworker problems.

Second, all three governments were criticized for their failure to live up to treaty and public commitments concerning migrants. Discrimination and the deficiencies of training programs for migrants particularly impaired bilateral relations between host and source societies.[14] The per-

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[12] Tapinos, *L'immigration etrangere en France*, pp. 33–34. This prompted a heavy influx of Algerians to France whereas the French authorities had hoped to attract Italian or Portuguese immigrants.

[13] Ibid., p. 87.

[14] Italo-Swiss relations, for example, were seriously strained by alleged Swiss neglect of migrant social

Table 1. Foreign Labor's Importance in Selected German Sectors, 1964 – 75.
(Percent of Employment)

	1964	*1965*	*1966*	*1967*	*1968*	*1969*	*1970*	*1971*	*1972*	*1975*
Agriculture	0.3	0.4	0.5	0.4	0.4	0.5	0.7	0.9	1.0	1.1
Machine tools, Auto assembly	2.5	3.0	3.3	2.7	2.8	3.8	4.9	6.0	6.0	6.2
Construction	7.8	8.7	9.0	6.6	6.6	9.0	12.8	16.1	17.8	12.4
Services	3.7	4.4	5.3	5.5	5.4	6.3	7.7	9.6	11.3	12.8

Source: R. Leupoldt and K. Erman, *Arbeitsmarktsatistiche Zahlen in Zeitreihenform* (Nurnberg: Insitut fur Arbeitsmarkt und Berufsforschung, Bundesanstalt Fuer Arbeit (BFA), 1978), pp. 67 and 98.

vasive spectacle of guestworker slums, exploitation by unscrupulous employers, and racist outrages, embarrassed governments domestically and alienated foreigners abroad. The governments were often sincere in their attempts to provide safeguard and training, but such provision proved to be agonizingly difficult to enforce.

A third general problem encountered in the implementation of guestworker policies was the confusion created by the myriad statutes and treaties regulating the sojourn of guestworkers. The diverse status of guestworkers, especially in France, complicated administrative procedures and invited misunderstanding of governmental policies even though there was a discernible trend throughout the postwar era toward uniform treatment of migrants whatever their status. This was partially due to pressure of international organizations that recommended guidelines for guestworker policies. In France and Germany, a tendency emerged to treat all guestworkers like European Economic Community (EEC) nationals,[15] who were to have social and economic rights similar to those of native workers. Thus, the pressure was toward liberalization of the status of migrants.

All of these shared difficulties were corollaries of the underlying problem caused by an ever-growing demand for guestworkers once the programs began. Initially conceived as an expedient way to relieve "temporary" manpower shortages, recourse to guestworkers led to ever greater dependence upon foreign labor, especially as native workers began to shun low-paying, physically arduous jobs.[16] Table 1 illustrates the phenomenon of foreign worker replacement of native workers through time in selected industries in Germany.

Sociopolitical factors were undoubtedly as important as economic ones in leading native workers to spurn low-skilled and physically taxing jobs. First, native workers were unencumbered by employment restrictions: "priority to indigenous labor" policies gave native workers preference over equally qualified foreigners. As economic expansion opened up new job opportunities in tertiary industries, providing native blue-collar workers access to socially more esteemed jobs, dependency on foreign workers for unskilled labor increased, as did the social stigma that came to be attached to the

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conditions. Similarly, Franco-Algerian relations were exacerbated by the French failure to implement promised manpower training programs.

[15] Articles 48 and 49 of the Treaty of Rome, the legal basis of the EEC, stipulated that there be no discrimination based on nationality in employment among the member states.

[16] The widespread assumption in postwar Western Europe that economic boom would give way to recession cannot be overemphasized. Given pervasive uncertainty about their economic future, many European employers were reluctant to invest in capital, which represented a fixed cost of production regardless of actual demands for the employer's output. These employers often believed, however, that workers, especially foreign ones, could be released when they were no longer needed *at little or no cost to the employer*. The social welfare state forces employers to share the costs of native worker unemployment, of course, but exclusions and rotation led to the widespread assumption that foreign unemployment would impose few costs on labor-host societies.

jobs they held. Certainly, the stigma arose partially from discrimination or racism. Whatever the cause, native workers, protected by "socially advanced" unemployment and welfare benefits, came to regard many jobs employing large numbers of foreigners (especially construction, mining, automobile assembly and hotel-restaurant work) as too socially demeaning and arduous to be acceptable for employment. As such jobs were shunned by native workers, alien workers quickly became indispensable to employers, thus establishing themselves as a structural, rather than temporary, component of Western European economies.

Expectations of foreign worker rotation lost out to humanitarian and economic considerations. The forced rotation of foreign workers through denial of permit renewal came to be seen not only as wasteful of training and adaptation time, but also as a cause of personal hardships for migrants that were difficult to accept in the context of European welfare states. Furthermore, guestworkers came to play such a vital labor-force role that massive repatriation would have caused severe economic problems. A French government report in 1977 concluded that large-scale repatriation of foreign workers there would cause, not decrease, considerable unemployment for Frenchmen, contrary to the expressed vision of advocates of foreign worker forced repatriation.[17]

The self-sustaining growth in dependency upon guestworkers, then, was the most important unanticipated consequence of opening up employment to aliens. As guestworker employment grew, dependents abroad increasingly joined foreign workers. The French and Germans allowed dependents in after a year's delay while, in Switzerland, foreign workers had to wait for fifteen months before their families were permitted to join them. With the addition of family members, guestworker populations began to require more social services, eventually involving important costs in outlays for social infrastructure. Perhaps more importantly, though, the decision to introduce guestworkers gave rise in every country to novel integration problems and minority issues requiring governmental intervention. Despite their alien status, migrants demanded representation and certain forms of political participation. Guestworkers began to participate in political parties, trade unions, and their own autonomous political organizations. Through various forms of agitation, including strikes and street protests, guestworkers were often able to mobilize public support to influence public affairs on their behalf. The political activities of guestworkers complicated bilateral relations with homelands while eliciting an indigenous political backlash against government migration policies.

Thus, there was a vast array of unanticipated demands made upon government that can be traced to the adoption of guestworker programs. The cumulative impact of these various demands was twofold. As hidden social, economic, and political dimensions of guestworker programs became visible, they led to the demise of Western European guestworker policies. By the time recruitment was halted, however, many supposedly "temporary" workers had earned the right to permanent work permits. Consequently, as a result of previous practice and current policy, guestworkers in Western Europe find themselves in limbo, being full-fledged citizens neither of their homelands nor of the Western European countries in which they live.

Numbers, Characteristics, Distribution, and Determinants

The respective foreign work forces of the three host countries are broken down in Table 2 by nationality groups.[18] Colonial legacies and geography have resulted in diverse foreign work force composition from country to country. These differences have caused some policy variation among

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[17] The report is referred to as "Le Pors Study" after Anicet Le Pors, its major author. See *Le Monde* (June 19 – 20, 1977), p. 21.

[18] SOPEMI, *1977 Report* (Paris: OECD, 1978). Due to statistical shortcomings stemming in part from the myriad work permits granted foreigners in France (especially those from ex-colonies), the French foreign work force probably was underestimated by 400,000 in this report.

Table 2. Employed Foreigners by Nationality in 1977.
(Percent of Total Foreign Work Force)

Source Country	*France (%)*		*Germany (%)*		*Switzerland (%)*	
Algeria	331,100	(20.9)	1,400	—	—	—
Morocco	152,300	(9.6)	15,600	—	—	—
Tunisia	73,000	(4.6)	12,000	—	—	—
Turkey	31,200	(2.0)	527,500	(27.2)	15,168	—
Greece	—	—	178,800	(9.2)	5,165	—
Yugoslavia	42,200	(2.7)	390,100	(20.1)	24,110	—
Spain	204,000	(12.9)	111,000	(5.7)	68,884	(12)
Portugal	306,700	(22.8)	63,600	(3.3)	4,144	—
Italy	199,200	(12.6)	276,400	(14.3)	261,566	(48)
Total	1,584,300		1,937,100		516,040[a]	

[a] Does not include seasonal or frontier workers.
Source: Systeme d'Observation Permanente des Migrations, *1978 Report* (Paris: OECD), p. 3.

the three host countries. Workers from ex-colonies, for example, have enjoyed privileges denied other foreign workers.

Foreign workers constituted a significant proportion of the total work force in France, Germany, and Switzerland in 1976—ranging from 10 to 20 percent—as is shown in Table 3. The data also show that guestworkers there had considerably higher labor-force participation rates than natives; in fact, this difference was even more marked in earlier years, before the massive family reunification that has recently occurred.

The relative importance of the foreign share of the total population in these countries—from 7.8 percent in France to 15.8 percent in Switzerland—represents a demographic characteristic of considerable political importance.[19] The foreign percentage of live births in each of these countries is also important. In France, the children of foreigners represented 9.7 percent of all live births in 1976, while in Germany and Switzerland the percentages were 16 and 29.5 percent respectively.[20] Some experts view these guestworker birth rates with alarm, fearing that over the long run this "second generation" of guestworkers will be the source of social and political unrest.

Also important in this respect are the effects of family reunification. As Table 4 indicates, there was a significant downward trend in foreign worker employment between 1973 and 1977, but the total foreign populations of the three countries have remained almost steady. The explanation for this apparent paradox is that family reunification has compensated for the decline in gainfully employed foreigners in recent years. Furthermore, family unification is likely to continue for some time,[21] and to provide a steady supply of new guestworkers as guestworker children enter the job market. The children of guestworkers born in Germany and Switzerland do not automatically become citizens as they would in the United States and foreign children born

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[19] Advanced industrial societies are aging societies. Steadily declining birth rates and ever greater longevity have significantly increased the proportional importance of advanced age cohorts in Western Europe as in the United States. When this fact is taken into consideration along with prolonged schooling and lower retirement ages, it becomes apparent that a relatively smaller active population is carrying an ever greater burden in social security and educational outlays. Without the alien contribution to the active population, already strained social security systems might collapse.

[20] *Sozialpolitische Umschau*, No. 14, 1978.

[21] As of 1976 one million dependents had been reunited with guestworkers in Germany since 1970, and child support allowances were still being paid out to over 1.1 million other dependents abroad. Presumably, this latter group of children might also migrate to Germany in the future. As it was, the German government estimated that 256,000 jobs would have to be created for guestworker children over the period 1976 to 1981. See Inter Nationes, *Social Report* (October 1976).

Table 3. Foreign Workers as a Percentage of Economically Active Populations in 1976.

	France	*Germany*	*Switzerland*
Total Population	52,841,746	61,542,000	6,269,783
Total Work Force	22,133,600	26,696,000	2,995,777
Overall % of Active	41.9%	43.4%	47.8%
Foreign Population	4,125,000	4,090,000	1,013,000
Foreign Workers	1,900,000	2,171,000	533,000[a]
Foreign Activity Rate	46.1%	53.1%	55.6%
Foreign % of Total Pop.	7.8%	6.6%	15.8%
Foreign % of Active Pop.	10.9%	9.7%	19.8%

[a] Does not include seasonal or frontier workers.

Sources: Sozialpolitische Umschau, No. 14 (January 27, 1978), p. 2 and International Labour Organisation, *1977 Yearbook of Labor Statistics* (Geneva: ILO, 1978), pp. 39, 40, and 45.

in France have the option of declaring citizenship upon their majority.

The fact that so many foreigners have remained employed in spite of the European recession in recent years confirms the structural role of guestworker employment in the advanced industrial countries of Western Europe. While it is conceivable that Western European governments might succeed in substituting the indigenous unemployed for guestworkers, it is highly unlikely. Increasingly attractive alternatives for native workers reinforce their unwillingness to accept "degrading" work and appear to augur continuing dependence upon guestworkers. A Malian employee of the Parisian subway succinctly made the point. When asked if he feared losing his job because of his participation in a strike, he declared, "The last thing I worry about is losing my job to a Frenchman. No Frenchman would do what I do for what I get paid."[22] Thus, it is above all the nature of work done by foreigners and the relatively low wages they receive for it that makes it unlikely that the current dependence upon guestworkers will be reversed in the foreseeable future.

Table 4. The Evolution of Foreign Employment and Total Populations, 1974 – 1977.

Year	*Foreigners Employed*	*Total Foreign Population*
	France	
1974	1,900,000	4,058,000
1975	1,900,000	4,106,000
1976	1,584,000	4,205,000
1977	1,584,000	4,237,000
	Germany	
1974	2,360,000	4,127,000
1975	2,171,000	4,089,000
1976	1,937,100	3,948,000
1977	1,888,600	3,948,000
	Switzerland	
1974	593,000	1,064,000
1975	553,000	1,012,000
1976	516,000	958,000
1977	492,800	932,000

Source: SOPEMI, *1978 Report*, pp. 19, 40.

Furthermore, many guestworkers have lived in Western Europe long enough to obtain permanent residency rights. Those workers usually cannot be sent home against their will because of EEC and bilateral treaty provisions. It is estimated, however, that two million foreigners lost their jobs or returned home during the current recession. Most remaining guestworkers are long-term residents,[23] but not citizens. Access to citizenship varies significantly among the three countries. France has relatively open access, but Germany and Switzerland do not.[24] In all three countries, many migrants who qualify for citizenship do not ask for it. There are several reasons for this. First, and foremost, the immigrants believe that eventually they will return to their homeland. Second, their perception of the host society is of a hostile environment, and, third, active homeland government policies encourage them to maintain homeland identification.

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[22] *The New York Times* (July 7, 1977), p. 12.

[23] W. R. Boehning, "International Migration in Western Europe: Reflections on the Past Five Years," *International Labour Review*, Vol. 118, No. 4, (July-August 1979), p. 401.

[24] The relative ease of access to citizenship in France is most apparent in the shorter time period it takes to qualify for citizenship there. France requires that a foreigner reside on its territory for only five years before

Economic Issues

The percentage of foreign workers engaged in each sector of the economy is shown in Table 5. Compared to the indigenous work force, foreigners are disproportionately concentrated in the industrial sector.

Table 5. Foreign Employment by Sector in 1976 (as a Percentage of Total Foreign Employment).

Sector	*France*	*Germany*	*Switzerland*
Agriculture	5.7	1.0	1.0
Industry	38.7	62.6	45.0
Building	26.8	11.2	11.5
Commerce	6.6	6.1	13.3
Services	19.7	15.2	27.0
Transport	2.5	n.a.	2.6

Sources: SOPEMI, *1977 Report*, and Department Federal de l'Economie Publique, *La Vie Economique*, (Bern, April, 1977), Table 17.2, p. 189.

Although foreign employees may legally hold professional or other white-collar jobs, about 90 percent are manual workers.[25] One reason for this occupational and industrial distribution is that the work permits available to non-EEC guestworkers tie them to a specified job with a given employer during the first year of their employment.[26] Since manufacturing, construction, and service employers were most active in recruiting guestworkers, concentration of foreign

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qualifying for citizenship. Germany requires ten years and Switzerland twelve. Administratively, France has the easiest naturalization procedure; very few qualified foreigners are denied citizenship; and although a moderate tax may be assessed, French practice is to give consideration to foreigners of "modest means." In Switzerland, on the other hand, citizenship is awarded through a complicated system under which the commune grants the right to citizenship but this grant must then be ratified by the cantonal and federal governments. The complexity of the system and the amount of the tax that must be paid in some cantons and communes result in a very low overall naturalization rate for foreigners, less than one percent for 1975. In Germany, even a ten-year residency does not give foreigners a "right" to citizenship. German officials have discretion as to whether to grant citizenship to a petitioner. Since German policy until just recently has been based on the principle that Germany ought not to become an immigration country, only a handful of guestworkers acquire citizenship each year.

[25] In France and Germany, data are available on the breakdown of foreign employees by job classification and socioeconomic status respectively. The French figures are for 1975 while the German are for 1972.

France		*Germany*	
Profession	*(%)*	*Socio-Economic Status*	*(%)*
Agricultural Workers	4.4	Non-Manual	8.0
Employees	5.4	Skilled Manual	21.0
Qualified Workers	22.9	Semi-Skilled Manual	41.0
Manual Laborers	49.0	Unskilled Manual	28.0
Service Workers	6.9	Apprentice	2.0
Others	11.4		

Sources: SOPEMI, *1977 Report* and Ray Rist, *Guestworkers in Germany* (New York: Praeger, 1978), pp. 122–23.

[26] Non-EEC foreign workers in France, with the major exception of Algerians, receive three-year work and residency permits after the first year. These three-year permits still limit foreign workers to one profession and one region but the permit holder can move from job to job within his or her profession. After ten years of permit renewal or continuous residency, foreign workers qualify for "privileged" or ordinarily nonrevocable residency permits and (prior to 1975) for a permanent work permit valid everywhere in France for the worker's profession.

In Germany, non-EEC guestworkers receive two-year work and residency permits upon expiration of their initial one-year permits. Their freedom of movement was limited for a few years (1976–79) by an administrative restriction prohibiting a further influx of foreigners into several major cities. After their first year of residence German foreign workers are free to change employers. After five years of permit renewal (consistent with OECD recommendations), foreign workers receive five-year work and residency permits. After ten years, foreign workers are eligible for permanent work and residency authorization.

Swiss officials review foreign worker residency permits yearly. Prior to five years of continuous residency, most foreign workers receive one-year permits. Foreign workers can change professions upon renewal if labor shortages exist in professions for which application is made. After five years, a worker receives "preferential" status. Permits then are prolonged for two-year periods and it is understood that renewal is no longer problematical. After ten years, nonrevocable resident status is accorded but this authorization is still valid for only one canton (unless a request to move is accepted by authorities in another canton). Job restrictions are dropped for permanent resident aliens.

workers in those industries is not surprising. Over time, however, the guestworkers' occupational and industrial distribution comes to more closely resemble that of the native population.[17]

The speed with which occupational and industrial structures will or should converge is a matter of current debate. Some observers believe that "positive discrimination" or affirmative action is necessary to expedite economic convergence.[18] Current integration policies largely take a long-run approach, implicitly assuming that convergence can be more efficiently achieved by educating the second generation foreigners now in the school system.

The ultimate fate of guestworkers rests in part on the reasons for first introducing alien workers. Within many European firms wage schedules preserve relatively fixed differentials over time. In the 1960s, an insufficient number of applicants appeared for lower category (wage and status) jobs, such as assembly line workers in manufacturing and laborers in construction. Employers *could* have attempted to attract applicants to these low category jobs by revamping their wage schedules, but union agreements and tradition would have made intra-establishment changes in wage differentials difficult to effect. Instead of revamping wage schedules, employers preferred to import guestworkers, finding it cheaper even though government fees and housing, transportation, and interpreter services imposed additional costs for each alien hired.

Under the circumstances, employer savings could be considerable. Suppose a manufacturer had 1000 job slots and 50 low level vacancies. If the current wages had been $5 to $15 per hour and the 50 vacancies could have been filled with natives if the lowest wage were raised from $5 to $7 per hour, why would the employer have imported foreigners? The answer, of course, is that if the wage structure were rigid, the *total* marginal costs of filling the 50 vacancies would not have been only $100 (50 vacancies x $2 per hour)—it would rather have been $2000 (or more) per hour because all differentials up the wage hierarchy would have to have been preserved.[19] Thus, employers capable of passing any future infrastructure and settlement costs to society-at-large were clearly rational when preferring aliens to potential native recruits.

A reliance on foreigners to avoid wage restructuring allows differentials between traditional and expanding sectors to encourage even more exodus than would otherwise occur of native workers from traditional sectors that are short of labor. As a result, labor-importing societies place themselves on a labor-importation treadmill. To avoid costly restructuring, foreigners are imported. The availability of foreigners lowers incentives to restructure wages and working conditions. The widening gulf between labor-short and expanding sectors encourages a faster native exodus and even more "labor shortages." The net result is an especially rapid concentration of guestworkers in declining sectors, which tends to preserve the initial occupational and industrial distribution of those workers.

Over time, however, the extension of political rights and the foreigners' acquisition of job and language skills promotes foreigner-native convergence in the labor market. New economic issues then arise. Initially, legally restricted guestworkers do not displace natives; often, in fact, guestworkers initially increase the employment security and collective bargaining strength of complementary (skilled) natives. Labor market competition occurs later, when foreigners attempt upward mobility or recession limits the number of jobs available to both aliens and natives. Some observers feel that the most severe labor market competition will come from the second generation—the children of guestworkers, who are educated in the labor-host country and are unwilling to accept the low pay and low-status jobs previously sought so eagerly by their parents.[30]

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[17] Between 1973 and 1979, for example, the labor-force participation rates of foreign populations declined and began to approach those of indigenous populations as a result of families joining foreign workers who stayed on indefinitely. Specifically, in 1973, there were roughly seven million foreign workers and five million dependents throughout Western Europe, whereas in 1979 it was the reverse: five million foreign workers and seven million dependents. SOPEMI, *1973 Report* and *1979 Report* (Paris: OECD, 1973 and 1979).

[18] *Le Monde* (March 25 – 26, 1973), p. 1.

[19] Wage hierarchies have the same effects on the labor costs that a monopsonist faces when trying to increase employment. In the monopsonist case, the marginal cost of hiring the last (homogeneous) worker exceeds the average cost of labor because each worker under monopsony is receiving only his or her reservation wage, not the value of his or her marginal contribution to production. To expand employment under such circumstances, the monopsonist must raise wages (to all workers) in order to induce workers with higher reservation wages to apply. The wage hierarchy argument is analogous, but now we explicitly permit work force heterogeneity and only require that *relative* positions in the hierarchy be maintained.

The low wages of foreign workers are not controversial as long as foreigners are viewed as *temporary* members of the host society. Even the foreigners themselves initially see low-wage industrialized jobs as far better than those available at home. Guestworkers often work nights and weekends, sometimes earning incomes that exceed those of similarly situated natives. However, the low wage rates attached to jobs filled by guestworkers, the cyclical sensitivity of the manufacturing and construction sectors in which they are concentrated, and their lack of income-producing assets ensure that most guestworkers remain in the lower tiers of their host-society's income distribution.

Guestworkers are concentrated not only in certain industries but often within particular establishments. Some automobile factories, for example, segregate workers by nationality, using Turks on the assembly line, Italians in skilled positions, and natives in management. Foreigners are sometimes segregated from natives even when they do similar work. Charges that this segregation reflects a deliberate policy of paying foreigners less for the same work have sparked a variety of intra-plant and intra-union disputes as well as a number of strikes.[31]

The many consequences of the guestworkers' role at the bottom of the labor market are certainly not devoid of political implications. The most appalling of these consequences is the tremendously high accident rate among aliens.[32] The working conditions of migrants and stresses placed upon them are also reflected in their high rates of tuberculosis and nervous disorders.[33] These conditions frequently spark guestworker protests, especially spontaneous strikes.

A second direct consequence of the guestworker role in the Western European economies is their geographic concentration. Guestworker populations are clustered in heavily industrialized urban areas with an abundance of blue-collar jobs requiring little or no skill.[34] A sharp spatial cleavage therefore separates guestworkers from the indigenous populations. The result has been the development of guestworker ghettoes throughout Western Europe: foreign workers live in the cheapest, most poorly equipped, oldest, and most overcrowded housing.[35] Such housing breeds its attendant social dysfunctions in Western Europe just as it does elsewhere.

Sociopolitical Rights

Although guestworker rights are restricted in comparison to those of citizens, legally introduced guestworkers and their dependents benefit from a panoply of rights. Discretionary prerogatives reserved to labor and police officials, however, render migrant rights problematical. Frequently, it has been charged, the inferior legal-political status of foreigners (especially their exposure to loss of residency rights) has resulted in a foreign worker quiescence and willingness to abide by normally unacceptable employer demands. This was certainly somewhat true in the early years of postwar migration. However, this same inferiority status also gave rise to militancy as foreign workers became more aware of their rights and as discriminatory restrictions on them were eroded.

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[30] See, for example, Michael Piore, *Birds of Passage* (New York: Cambridge University Press, 1979).

[31] Eckart Hildebrandt and Werner Olle, *Ihr Kampf ist Unser Kampf: Ursachen, Verlauf und Perspektiven der Auslaenderstreiks 1973 inder BRD* (Offenbach: Sozialistisches Buero, 1976), pp. 79 – 87.

[32] In France, guestworkers, who made up less than 10 percent of the total work force, accounted for 22.5 percent of work-related accidents in the early 1970s, when about one foreign worker was killed on the job each day. In Germany during the same period, the foreign worker accident rate was 25 percent higher than the rate for indigenous workers. See *CGT-CFDT Press Conference* (Paris: Confederation Generale du Travail, February 17, 1975), annex 3, p. 16 and *Problemes Economiques* (Paris: La Documentation Francaise, November 29, 1972), p. 16.

[33] Christine Labonte, "Einige Bemerkungen zum Arbeitverhalten und zur Arbeitsmotivation auslaendischer Arbeiter in der BRD," in Ayse Kudat and Yilmaz Oezkan, ed., *Internationale Koferenz Ueber Gastarbeiter* (Berlin: International Institute for Comparative Social Studies, 1975), pp. 289 – 91.

[34] In Germany, 50 percent of the guestworker population is concentrated on less than 4 percent of the territory; in France, 54 percent of the total foreign population lives in the Paris region alone; and the canton of Zurich has one-fifth of the total Swiss alien population.

[35] Castles and Kosack, *Immigrant Workers and Class Structure in Western Europe*, pp. 240 – 317.

Guestworkers have virtually full union rights in law and in practice. They are free to join existing unions and their membership is encouraged by the unions themselves. Their participation in unions reflects prevailing unionization patterns in the respective countries. For example, since the overall unionization rate in Germany is comparatively high, so is that of the *Gastarbeiter* there. Also, foreign workers tend to unionize more in heavily unionized industries than in weakly organized ones. Their unionization correlates with residency duration and all indications are that the foreign worker unionization rate will eventually equal that of indigenous workers.

The large number of foreign workers joining unions has significantly affected trade unionism in the host societies. As the number of foreign workers in Europe grew and as union leaders realized the consequences of foreign worker disaffection from the unions, the indifference (even hostility) that once characterized union attitudes toward foreign workers gave way to union efforts to organize them and to articulate their specific interests. From the beginning of postwar guestworker programs, however, European unions had insisted that foreign workers be extended the same work-related rights as indigenous workers in order to protect the wages and working conditions of the latter. Also, the initial restrictions affecting foreign worker participation in union and worker council elections have been eliminated over the years.

Although at times unions have benefitted from foreign worker support for union-sponsored strikes and other job actions, foreign worker strikes have sometimes disrupted the labor peace (established by industrywide labor agreements) in Switzerland and Germany and such strikes have had anti-union overtones in France.[36] Yet in none of the three countries do foreign workers have a clear-cut right to strike. In France they are formally guaranteed the right, but on the stipulation that they not disrupt the public order. The general pattern in France is that foreign worker strikes sponsored by the major French trade unions are tolerated while foreign worker wildcat or autonomously organized strikes are not. In Germany foreign workers also have a recognized right to strike, but under the German social partnership system of industrywide contract conventions, strikes are not legal unless sufficient notice is given and certain other procedures are followed. As long as foreign workers are participating in union-sponsored work stoppages, they are seen as acting within the law. However, there has recently been a considerable number of wildcat strikes (significant because of the virtual absence of such strikes prior to 1970) involving foreign workers that have been declared illegal. In Switzerland, the situation closely parallels that of Germany, but the right to strike is not formally guaranteed.

In an effort to reduce integration problems manifest in the outbreaks of wildcat strikes and other forms of disruption, governments have progressively attempted to provide migrants a legitimate public voice. This remains a problem, however, because as aliens, foreign worker participation in European public affairs is limited. With a few minor exceptions, they can neither vote in host society regular elections nor hold public office. Those from democratic homelands can and do vote in their own national elections, however. France and Germany allow voting at consulates on their territory although this is forbidden in Switzerland. Homeland-oriented political activity, such as rallies and the distribution of campaign literature, is not unusual. Activities among emigrants in opposition to current governments are generally clandestine, but are tolerated as long as they remain nonviolent.

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[36] Cordeiro, *Les Immigrés* (Paris: Stock, 1975), pp. 255–322.

Foreign workers enjoy liberties of expression, including press and assembly, and largely are free to form their own associations or to join indigenous ones. In France, foreign workers are enjoined to remain "politically neutral" but this legal restriction is seldom enforced by the police and foreign party membership is tolerated. In Germany and Switzerland, foreign workers enjoy the formal right to join political parties. The most important restrictions on migrant political activity in all three countries stem from the vague stipulation that public order not be endangered, and political violence by migrants is not tolerated.

To resolve foreign workers' dissatisfaction with their lack of "voice" in European governments, special advisory boards and councils have been established through which the workers can communicate their specific problems or desires to public authorities. Foreign workers may even be able to elect representatives to these councils, but they remain consultative bodies only, with no genuine decision-making power. Still, these organizations have improved foreign worker-governmental communication and have increased awareness of migrant problems.

Policy Evaluation

The fundamental flaw of postwar Western European guestworker policies was the implicit assumption that the economic man could be divorced for the purposes of public policy from the social, political, and cultural being. It is true that without the manpower supplied by guestworker programs, labor shortages would most probably have impeded the postwar economic growth of Western Europe. The short- and middle-term economic benefits accruing to Europeans, however, were mitigated by largely unforeseen long-term problems. First, the countries became dependent upon foreign workers to provide manpower for key industries. Second, recourse to foreign workers probably retarded some needed rationalization of industry and restructuring of the labor force. Third, foreign worker employment tended to depress wages and to deteriorate working conditions in low-skilled job categories. Fourth, as foreign workers became long-term residents, they and their dependents required important social service and governmental infrastructure expenditures. Fifth, foreign worker employment involved hidden overhead costs stretching from additional employer paperwork to the necessity of bilingual supervision and job training. With the recession of the mid-1970s, of course, high unemployment of indigenous workers made guestworker programs appear even less like assets to the economy of Western Europe.

Probably more important over the long run than those economic impacts, however, were the civil rights aspects of guestworker programs. These programs have produced a widespread sociopolitical malaise, evident first in the integration problem that has developed to the point of altering the sociopolitical fabric of Western European democracies. Foreign workers have been the object of widespread discrimination and occasionally murderous racism in all the countries studied. Their presence has also fostered right and left-wing political extremism, which periodically erupts into violence or otherwise undemocratic behavior.

Second, the presence of a large alien population without full rights has been detrimental to the functioning and legitimacy of Western European democracies. The disadvantaged status of foreign workers has been the cause of disruption as foreign workers have exerted pressure increasingly upon public officials through demonstrations and other extra-parliamentary means. Their "radicalism" is perceived as a threat to labor peace and social partnership agreements and, in fact, foreign workers have been key actors in many Western European labor disputes. The growing trade union affiliation of these workers, added to their ability to influence public affairs through church groups, political parties, international organizations, and homeland governmental representation, has made foreign workers a significant transnational political factor.

Third, European governments have often failed to live up to the terms of bilateral and international migrant labor agreements, as implementation of agreed-upon programs and safeguards on behalf of temporary workers proved to be difficult. Abuses of foreign workers and other issues stemming from their presence frequently complicated the bilateral relations of Western European countries with labor source countries. The treatment of foreign workers tarnished Western European policy in support of human rights. While foreign worker remittances aided the balance-of-payments problems of labor-sending countries and employment abroad eased unemployment problems, a politically detrimental perception that foreign workers were "exploited" in Western Europe emerged. Unilateral European decisions to stop temporary worker programs in recent years have exacerbated the already serious political-economic troubles of labor-sending countries in a period of worldwide recession.

Fourth, foreign workers have given rise to a European variant of what Gunnar Myrdal termed the "American dilemma." The negative sociopolitical consequences of guestworker policy will be long-term, especially in those Western European societies without a tradition of immigration. This is apparent in the social and educational problems of second generation migrants, the persistence of the "myth of return" among migrants, and the development of biculturalism in societal institutions.

The Western European experience therefore suggests that a temporary-worker policy and a reasonable level of nondiscrimination within a society are probably mutually exclusive. This is one of the major reasons that Western European temporary-worker policies became *de facto* immigration policies over the years. Although the condition of most foreign workers never was equal to that of a "slave" or "helot"—as some observers have suggested—migrants have endured severe hardships (adaptation problems, separation from loved ones, high rates of nervous disorders and work accidents, for example), which touched the collective conscience of Western Europeans and prompted them to "humanize" temporary-worker policies. This "humanizing" process mitigated against successful implementation of the original policies. When judged in terms of the original assumption of short-term residency, these policies have to be regarded as unsuccessful, except for the paradoxes of the French attitude toward migration.

Guestworkers generally do remain noncitizens despite having become full-fledged members of the work force. However, the alien work force must now be considered permanent and this, certainly, was never intended by the Swiss or Germans and is not desired even by the French at present.

An Expanded American "Guestworker" Policy?

Recent foreign and domestic advocacy of an expanded American temporary foreign worker program has prompted serious consideration of this policy option in Washington circles. Mexican and American advocates contend that such a policy would legalize and improve the status of incoming migrant workers, ensure an adequate manpower supply to low-skilled job categories threatened with projected shortages in the 1980s, and, above all, reduce the saliency of the "illegal alien issue" as a domestic political and international problem. In light of Mexican oil resources and the demands put forth by the Mexican American community for action on the illegal migration question, the Carter Administration has come under increasing pressure to adopt an expanded temporary worker policy as a solution.

Would a large-scale American temporary worker program, such as expansion of the current "H-2 program," actually solve, or significantly mitigate, the illegal migrant problem?[31] It would seem that the following reservations, based upon analysis of past American and European experiences with temporary worker programs, must be reckoned with before such a decision is made.

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[31] Intended to be a "fine tuning" instrument for the U.S. labor market, this program permits temporary workers to be brought in for jobs of a non-permanent character when American workers cannot be found. Only about 30,000 farm and nonfarm workers, primarily from the Caribbean, are brought in annually under its auspices. Due to its quantitative insignificance, the H-2 program has had little impact upon the economy in general. Aside from its value to agricultural interests in several locales, the H-2 program has

1. *Expansion of temporary worker employment will mitigate the illegal immigration problem but not end it.* The major comparative difference between foreign workers in Western Europe and the United States is the legal status of most foreign workers in Western Europe. It can be presumed that large-scale guestworker programs contributed much to the less serious rate of illegal immigration to Western Europe. However, illegal immigration to Western Europe (estimated at 10 to 15 percent of the total legal foreign populations) has persisted despite large-scale guestworker programs *and* comparatively strict enforcement measures.[38] Employers of illegal aliens in Western Europe are subject to heavy fines and citizens can be required to carry identity papers. In the French case, there was massive illegal immigration until 1972 in spite of legal procedures giving foreigners relatively easy access to the French labor market.

Even assuming an American program issuing between 500,000 and 800,000 temporary work permits per year, then, such a policy will not end illegal immigration. Significantly, during the American-Mexican bracero program (1942 – 64), the major experiment to date in the United States with a guestworker policy, illegal migration and a program providing for the legal employment of temporary workers were not mutually exclusive.[39] In 1954, for instance, there were 300,000 "legal" bracero workers and still over one million apprehensions of illegal aliens. Indeed, it has been argued that the bracero program had a "magnet effect" for illegal migrants. News of job opportunities in the United States and the creation of networks of contacts for illegals on American soil served to encourage illegal migration. Also, of course, a program that only expanded job opportunities for Mexicans would not respond to illegal migration from other countries.

2. *Temporary worker residency is unlikely to be short term.* Temporary worker policy assumes that foreign workers will return home. In Western Europe, many postwar guestworkers became permanent residents. Economic and humanitarian considerations militated against the rotational assumptions of European temporary worker policy. Such considerations would also be likely to come into play in the American context.

An effective policy of rotation requires placement of migrant workers in acceptable jobs in their homelands, but the burgeoning unemployment problems of countries like Mexico and the disparity between wages in the United States and migrant-sending countries make it unlikely that temporary workers will willingly comply with such compulsory rotation. Migrant over-stay, especially without a potentially discriminatory worker identification system, would likely be a severe problem. The combination of a high probability of continuing illegal migration and the repatriation difficulty indicates that an expanded American temporary work force would be an additional problem, rather than a solution to the illegal alien quandary.

3. *Temporary worker policy is unlikely to ensure respect for the human dignity of*

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been noteworthy mainly as a source of administrative brouhahas as frequent attempts are made to have Labor Department refusals of H-2 certification overruled. Temporary worker rights under the program are severely restricted. This and other controversial aspects of the program have gone unchallenged only because of its small scale.

[38] Jacques Houdaille and Alfred Sauvy, "L'immigration clandestine dans le monde," *Population*, Vol. 29, No. 4 – 5 (July-October 1974).

[39] The bracero program brought at least four million Mexican farmworkers into the Southwest on a temporary basis. This treaty-based program represents the major exception in recent American history to the general prohibition against foreign labor. The braceros contributed significantly to the development of Southwestern agriculture. However, they were frequently the object of exploitation and discrimination, a fact that served to complicate bilateral relations with Mexico. Safeguards intended to protect braceros proved to be difficult to enforce. The program was unilaterally terminated by the United States in 1964 primarily as the result of pressure from organized labor, which argued that the program took jobs away from Americans and depressed wages and working conditions.

migrant workers. By its very nature, temporary worker policy in the context of a democratic society is discriminatory and stands in contradiction to the principle of equal opportunity. Temporary workers are restricted in terms of access to jobs and rights. As in Western Europe, massive American employment of temporary workers would likely result in domestic and international criticism of discrimination against American guestworkers who similarly would be relegated to the lowest paying and most physically dangerous jobs in the labor market. Such a policy would risk becoming a domestic contradiction of American human rights policy abroad.

4. *Over the long run, it is doubtful that the relations of the United States with migrant-sending countries would improve as a result of an expanded temporary worker policy*. European guestworker policies frequently caused strain in bilateral relations with migrant-sending countries. The most dramatic illustration of this was the near rupture of Franco-Algerian relations in 1973 as a result of racial incidents involving Algerian emigrants. Italo-Swiss relations also deteriorated as a result of alleged Swiss mistreatment of foreign workers. Turkey's ties to Western Europe were not strengthened by the unilateral decisions to halt guestworker recruitment. Similarly, the problems experienced by the United States in implementing treaty provisions protecting migrants during the bracero program had an adverse impact upon American-Mexican relations. Due to the inferior status of guestworkers and their susceptibility to exploitation despite safeguards, homeland governments tend to become resentful of the treatment afforded their nationals abroad and to evaluate bilateral relations in terms of the goodwill or respect shown to migrants.

5. *An expanded American temporary worker program will exacerbate the employment problems of American minorities.* While the current inflow of illegal aliens partially responds to unsatisfied demand for low-skilled labor, a large-scale foreign worker program would adversely affect the employment opportunities, wages, and working conditions of the least favored segment of the American work force. Furthermore, the Western European experience indicates that massive recourse to foreign workers will foster the creation of a two-tiered labor market wherein dependency upon foreign labor for the most unrewarding economic tasks becomes a self-feeding phenomenon. This inhibits restructuring or rationalization of low-skilled job categories over the long run.

These reservations, which only partially touch upon the manifold administrative problems associated with an expanded temporary worker policy, need to be seriously contemplated before a decision is made to enlarge our temporary foreign work force. If overriding diplomatic or domestic political considerations deem expansion imperative, then an expanded temporary worker policy must be designed to respond to these problems or risk failure. The European experience clearly sounds a tocsin in this respect. Their failures and difficulties with guestworker policy have resulted in civil rights and minority questions that bode long-term socioeconomic and political trouble.

28.

The United States, Mexico, and the Wetbacks, 1942-1947

OTEY M. SCRUGGS

[Otey M. Scruggs is assistant professor of history in the University of California, Santa Barbara.]

SEVERAL YEARS AGO, one of the most serious problems confronting the United States in its relations with Latin America was the influx of "wetbacks," Mexicans who cross the border unlawfully in search of work on American farms. In 1953, the peak year of illegal entry, close to one million were apprehended by the Border Patrol of the United States Immigration Service. In December, 1953, an immigration official characterized the influx as "perhaps the greatest peacetime invasion ever complacently suffered by any country under open, flagrant, contemptuous violation of its laws."[1]

The workers came principally because American farm wages, low as they were, were two and three times higher than wages in underdeveloped Mexico. They were encouraged to come by the farmers, who sometimes recruited in Mexico, but more often remained at home to welcome the migrants. The growers willingly contributed to lawbreaking because approval and support of illegal entry were part of the mores of border communities. But they did so too because no penalties were attached to the use of wetbacks. Efforts had been made in Washington to enact penalty legislation, but owing to the power of the southwestern farm bloc they had always ended in failure. Following the defeat of one such effort in 1952, the New York *Times* editorialized:

> It is remarkable how some of the same Senators and Representatives who are all for enacting the most rigid barriers against immigration from Southern Europe suffer from a sudden blindness when it comes to protecting the southern border of the United States. This peculiar weakness is most noticeable among members from Texas and the Southwest, where the wetbacks happen to be principally employed.[2]

Zeal by the border patrol in rounding up wetbacks was sure to antagonize westerners in Congress and adversely affect the Immigration Service appropriation.

Illegal entry from Mexico antedated American entry into the Second World War by more than half a century. Prior to 1882, there were no

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[1] "The Wetback Issue," *I & N Reporter*, II (Jan., 1954), 39.

[2] New York *Times*, Nov. 28, 1952.

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national restrictions on immigration, and Mexicans moved freely across the border to work in the mines and on the railroads and ranches of the Southwest. However, between 1882 and 1917, Congress passed laws forbidding the entry of paupers, contract laborers, diseased persons, and illiterates. But these laws, as the Texas State Employment Service pointed out in 1940, brought about "little interruption of the steady flow of Mexican immigration into Texas."[3] From 1885 to 1924 the contract labor law was consistently violated by Texas farmers, who sent their agents into Mexico to recruit and transport workers to the United States.[4] The smuggling of wetbacks became a lucrative trade along the border.[5] However, most Mexicans who entered unlawfully, crossed the thinly-guarded border without assistance and afterwards sought the services of labor contractors. In the early 1920's, wetbacks may well have outnumbered Mexicans who entered with visas.

After the establishment of the border patrol in 1924, the migration slowed down but did not entirely cease.[6] The patrol remained undermanned and was under constant pressure from southwestern farm groups to "relax its vigilance" at harvest time.[7] Even in the 1930's, when American citizens were unable to find farm work, immigration officials did little to keep wetbacks off border farms.[8] Long before World War II, the growers firmly believed that they had vested rights in "cheap" Mexican labor, any interference with which was un-American. Rather than raise wages to levels sufficient to attract American farm labor, they preferred to rely upon aliens whose unlawful status forced them to accept pitifully low wages.[9]

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[3] Texas State Employment Service, *Origins and Problems: Migratory Labor in Texas* (Austin, 1940), 7-8 (mimeographed). Hereafter referred to as T.S.E.S.

[4] Carey McWilliams, *Ill Fares the Land* (Boston, 1942), 250.

[5] On border smuggling, see *ibid.*, 250-251; T.S.E.S., *op. cit.*, 7-12.

[6] Professor Taylor reported that estimates of illegal entry in the immediate postwar period ran from 40 to 200 percent of legal entry; for the four years after 1924 the ratio fell from 200 to 40 percent. Paul S. Taylor, *Mexican Labor in the United States: Migration Statistics* (Berkeley, 1929-1930), 252.

[7] President's Commission on Migratory Labor, *Transcript of Hearings: El Paso, Texas* (1950), 299-300. Hereafter referred to as P.C.M.L.

[8] During the depression, the Immigration Service pursued a policy of apprehending only those wetbacks who "were bad citizens or had criminal records" in Mexico, on the theory that low farm prices entitled farmers to cheap Mexican labor. Official of South Texas Farm Organization to Congressman, May 22, 1944, files of the Department of State (hereafter referred to as S.D. files). Because of restrictions, when reference is made to Department of State material, it will not in most cases be possible to identify writers and recipients of letters and memoranda.

[9] Farm wages have traditionally been lowest in areas adjacent to the Mexican border. In 1929, for example, wages in the El Paso area, where wetbacks were extensively used, were between ninety-five cents and $1.25 a day, while in central Texas, wages were between $1.50 and $1.75 a day. P.C.M.L., *op. cit.*, 275.

During the depression, the number of wetbacks remained relatively small and their use was confined largely to border areas. Statistics on illicit entry are lacking, but the number apprehended, an imperfect index at best, was between ten and thirteen thousand each year.[9] In the decade after 1942, however, the number of apprehensions doubled annually, and wetbacks were picked up in all parts of the Union. The influx was in response to the demand for farm labor after Pearl Harbor. As American workers left the fields for the factories and armed forces, the southwestern growers turned increasingly to Mexico.

By 1940, however, the Mexican government had become firmly opposed to the emigration of large numbers of workers without assurances from the United States that the nationals would be protected against exploitation and returned to Mexico at the end of a fixed period. It had spent several million dollars in the late 1930's repatriating thousands of migrants left stranded and destitute in the United States, and Mexican officials knew that the public did not favor the return of another horde of penniless workers.[10] Moreover, because of wartime demands for farm and mineral products, Mexico needed her workers at home. Fearing the damage that exploitation would do the Good Neighbor policy, American officials also favored a government-regulated importation program.[11] The result was the agreement of August 4, 1942, in which the two governments consented to the establishment of a program based on contracts providing for the temporary employment in the United States of *braceros,* contract Mexican laborers, and guaranteeing them a minimum wage and satisfactory living and working conditions.[12]

The bracero program, instead of diverting the flow of wetbacks into legal channels, as Mexican officials had hoped, actually stimulated unlawful emigration. Early in 1942, in response to advertising by American farmers, *campesinos* from the *Mesa Central,* Mexico's agricultural heart land, had begun migrating north with the intention of entering the United States.[13] After August 4, the northward movement increased, as workers anticipating the establishment of recruiting centers at the border began crowding into Ciudad Juárez, Mexicali, and Tijuana. In September, the Mexican government decided to confine recruiting to Mexico City and to transport those pouring into border towns back to their homes. But before the necessary conveyances were assembled, many migrants had crossed into the United States.

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[9] Written statement, W. F. Kelly, assistant commissioner of immigration and naturalization, to P.C.M.L., June 22-23, 1950, p. 3, in the Library of Congress, Washington, D.C.

[10] T.S.E.S., *Supplement to Origins and Problems: Migratory Labor in Texas* (Austin, 1941), 73 (mimeographed).

[11] Anon., "Memorandum on the Immigration of Mexican and Other Foreign Agricultural Workers," n.d. but early 1942, p. 2, in Farm Security Administration material stored in the Department of Agriculture building and made available to the author by Dr. Wayne D. Rasmussen, Department of Agriculture historian. Hereafter referred to as F.S.A. material.

[12] For the agreement of August 4, 1942, see *U.S. Stat.*, 77 Cong., 2 sess. (1942), Vol. LVI, Part 2, pp. 1759-1769.

[13] Guy Munn to Omer Mills, June 13, 1942, F.S.A. material.

Stimulated by reports from returning contractees of high wages in the United States, the northward movement continued to increase in the months that followed. Border farmers who disliked the bracero program because of the protection it afforded the worker were anxious to hire wetbacks. Texas growers were especially eager to obtain them, for Mexico had refused to allow contract labor to go to Texas on account of the state's long record of discrimination against Mexicans. Since Texans were unable to acquire braceros, the American government was the more easily persuaded to acquiesce in their use of wetbacks. W. F. Kelly, assistant commissioner of immigration, later wrote:

> At times, due to manpower shortages and critical need for agricultural production brought on by the war, the Service officers were instructed to defer the apprehension of Mexicans employed on Texas farms where to remove them would likely result in loss of the crops. . . . This situation resulted first in an increased illegal migration and second in [encouraging] Texas farmers, particularly in the border areas, to rely more and more on "wetback" labor for producing their crops.[illegible]

By the middle of 1943, Mexican officials had become concerned about the economic and political ramifications of the exodus. Fearing the drain on Mexico's labor supply, they were reluctant to raise the annual quota of braceros above 50,000, thereby causing farmers who were willing to employ contractees to hire wetbacks. They were also apprehensive of the damage that would be done the Good Neighbor policy and the government's position in the country if word that wetbacks were being exploited reached those eager to capitalize on the large reservoir of anti-American feeling in Mexico. Orders were accordingly issued to the skeleton Mexican border guard to redouble its efforts to prevent workers from leaving, and when this proved ineffectual, the Ministry of Foreign Affairs appealed to Washington to adopt appropriate measures to prevent illegal entry. Failure to take steps, the Mexican note of December 11, 1943, warned, might force some radical changes in the bracero agreement.[illegible]

Whatever its intent, the note did not lead to an improvement in the border situation. The commissioner of immigration informed the sec-

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[illegible] Written statement, W. F. Kelly to P.C.M.L., June 22-23, 1950, p. 6.

[illegible] Mexican Embassy to Department of State, Dec. 11, 1943, S. D. files.

retary of state on March 9, 1944: "This Service is taking all steps possible, consonant with the manpower situation, to prevent the clandestine and illegal entry of aliens into the United States."[illegible] To some people, however, the service apparently responded to the Mexican demand with too much vigor. On May 22, one Texas farmer complained to his congressman:

> During the past few weeks the Border Patrol has picked up and deported hundreds of wetbacks and when a buyer from the War Department discussed the matter with the Chief of the Border Patrol, he was answered that the Department must necessarily pick up and deport aliens who are reported to his men.[illegible]

In reality, such protests stemmed more from fear of losing a cheap, docile labor supply than from actual loss. In conversations with State Department officials, an immigration officer confessed that the service was deporting only those workers not engaged in harvesting perishable crops.[illegible]

Indeed, the action taken was nullified by Texas growers going to Mexico to induce workers to accompany them back across the Rio Grande.[illegible] Elsewhere, workers came to the farmers. The consul at Mexicali reported that many found shelter in the labor camps on the ranches, while others returned to Mexicali at night and recrossed through the same hole in the fence the next morning. Lack of manpower, he stated, was the reason for the patrol's inability to cope with the situation.[illegible] What the patrol did was to maintain "line watches" near the larger border towns and send out small, mobile units to police the intervening stretches. "To keep all the border under surveillance," the director of the Los Angeles district later declared, "was of course physically impossible."[illegible]

The complexity of deportation proceedings also held down the number of apprehensions. After the wetback had been caught, a warrant of arrest had to be obtained, personal data procured, hearings conducted, and a warrant of deportation issued. This process might require several days, and in the meantime the alien had to be housed. Prior to January,

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[illegible] Commissioner of Immigration and Naturalization to Secretary of State, March 9, 1944, S.D. files.

[illegible] Official of South Texas Farm Organization to Congressman, May 22, 1944, S.D. files.

[illegible] Memorandum of a telephone conversation, Department of State and Immigration Service officials, April 10, 1944, S.D. files.

[illegible] Department of State to Commissioner of Immigration and Naturalization, April 4, 1944, S.D. files.

[illegible] American Consul at Mexicali to Secretary of State, March 24, 1944, S.D. files.

[illegible] Albert Del Guercio, "Some Mexican Border Problems," *Monthly Review*, III (April, 1946), 290.

1945, when work was completed on a camp accommodating two hundred persons at El Centro, California, the Immigration Service had no detention facilities of its own along the southwestern border. In the past, arrangements in a few cases had been made with local officials for the use of county jails, but these facilities were neither large enough nor sufficiently numerous. Arrests, therefore, had to be restricted to the number that could be processed at a given time.[illegible]

Meanwhile the migration was causing grave concern in Mexico. The city fathers of Ciudad Juárez and Mexicali were at a loss how to meet the health and welfare problems created by the inpouring of tired and hungry workers. The cotton farmers of the fertile Juárez and Mexicali Valleys complained bitterly of the effects of the exodus on their own production.[illegible] These difficulties, coupled with those stemming from the bracero program, were proving an increasing embarrassment to the Mexican government. The powerful Mexico City press, from the beginning only lukewarm in its support of the program, was now highly critical of the undertaking and of the government's handling of the wetback problem.[illegible]

On March 27, 1944, Foreign Minister Padilla met with Ambassador Messersmith and pointed out the need to do "something drastic" to curb the illegal activity along the border.[illegible] Several days later, he requested a meeting of representatives of the two governments to discuss the situation.[illegible] Conversations were accordingly held in Mexico City for three days beginning May 29. The agreement signed on June 2 took the form of recommendations. The Mexican delegation promised to urge its government to adopt stronger preventive measures, including the issuance of a decree forbidding the departure of noncontract labor. The American delegation agreed to recommend the reinforcement of the border patrol and the immediate repatriation of all illegal entrants.[illegible]

In conformity with the agreement, the Immigration Service stepped

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[illegible] *Ibid.*, 292.

[illegible] The difficulty, of course, lay in the fact that farm wages were higher the farther north the worker travelled. In early 1944, rates averaged forty cents a day in central Mexico, from $1.20 to $2.40 in the Mexicali Valley of Baja California, and from $5.00 to $7.00 in the Imperial Valley of California. American Consul at Mexicali to Department of State, March 24, 1944, S.D. files.

[illegible] American Embassy (Mexico) to Department of State, May 18, 1944, S.D. files. American Embassy (Mexico) will hereafter be referred to as American Embassy.

[illegible] American Embassy to Department of State, March 28, 1944, S.D. files.

[illegible] Department of State to Commissioner of Immigration and Naturalization, April 4, 1944, S.D. files.

[illegible] Minutes of Meetings of the Representatives of the United States and Mexican Governments for the Discussion of Immigration and Border Problems, June 2, 1944, S.D. files.

up its efforts to rid the border country of wetbacks. Between June 2 and December 1, 1944, over forty-five thousand were apprehended and deported.[illegible] The Mexican government, on the other hand, neither augmented its border force nor published the proposed decree. It did, however, keep the newspapers of the capital apprised of the action taken by the United States, emphasizing the fact that the increased activity was the outcome of the recent bilateral talks.[illegible] An American official who had participated in the negotiations later wrote:

> My personal impression is that at the time of the conference on immigration matters the problem was definitely one of political danger and the Administration could be attacked upon it. With the steps taken by the American authorities, the problem was overcome, and since it was no longer a political matter, the agreement was considered not to be necessary, so all activities on the part of the Mexican government were stopped.[illegible]

The antiwetback campaign naturally stirred up resentment along the border. Several days after it was inaugurated, growers in the Lower Rio Grande Valley, who had been denied braceros, appealed to Washington to stop or at least reduce the deportations until after the harvest. The American consul at Ciudad Juárez declared on June 17 that there was the possibility of "recrudescence of anti-Mexican feeling if labor was not forthcoming from somewhere."[illegible]

The campaign also created problems south of the border. To speed up the deportation process immigration authorities began returning wetbacks through the nearest port of entry as fast as they were caught. All those apprehended in California were returned through Mexicali and Tijuana. Many, however, had originally come from central Mexico, and because railroad connections with the interior were lacking officials of the two towns were soon burdened with welfare problems. Late in August, 1944, the Mexican government requested the return of all workers picked up in the United States west of El Paso through Ciudad Juárez and Nuevo Laredo, which had adequate rail facilities. But because it lacked funds for transportation and the necessary detention facilities, the Immigration Service deemed the request impractical and continued to deport through the nearest port of entry. Suddenly, on December 5, 1944, without consulting the United States, the Mexican government closed the two Baja California ports to the return of wet-

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[illegible] Commissioner of Immigration and Naturalization to Secretary of State, Jan. 11, 1945, S.D. files.

[illegible] American Embassy to Department of State, June 17, 1944, S.D. files.

[illegible] Department of State to American Embassy, Sept. 29, 1944, S.D. files.

[illegible] American Consul at Ciudad Juárez to American Embassy, June 17, 1944, S.D. files.

backs. Surprised and angered, American immigration officials quickly proposed that those apprehended in California be returned through Mexicali and Tijuana if natives of Baja California, through Nogales if from Sonora, Sinaloa, and Jalisco, and through Ciudad Juárez if from other parts of Mexico. Those apprehended in states east of California were to be returned through the nearest port of entry. The entire arrangement, however, was to hinge on the Mexican government's willingness to transport the workers immediately into the interior. Promptly accepted by Mexico, the plan was incorpoarted in a Joint Memorandum of Conversation, dated January 9, 1945.[illegible]

As in 1944, Mexico failed to comply with the agreement, making no effort to transport the workers into the interior. American immigration authorities believed it absurd to haul thousands of men several hundred miles and leave them right across the border, from where they quickly re-entered the country. They therefore suggested that Mexico allow those picked up in the United States to be processed under the bracero agreement at centers established in the larger border towns.

Mexico had been opposed to border recruitment from the beginning of the bracero program, in part because it was sure to lead to congestion at the border. Moreover, since braceros were returned only to their points of recruitment, the Mexican government would still be faced with the problem of transporting the workers into the interior. On the other hand, the proposition was in harmony with the government's desire to confine emigration to contract labor. Its acceptance would also postpone the need to worry about getting the workers home. The government therefore consented, but to prevent border flocking it insisted that the centers be located at Monterrey, Chihuahua, and Hermosillo and that the United States pay all transportation costs. At the last minute, however, the War Food Administration, the agency in charge of the bracero program, decided that the added transportation expense would be prohibitive, and the entire matter was dropped.[illegible]

For more than a year afterwards, conditions grew worse. Because the Mexican government refused to transport workers inland, American officials slackened their efforts to remove wetbacks. An especially tense situation developed in the Imperial and San Diego valleys of California. Here, hordes of impoverished workers congregating in large camps of

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[illegible] Memorandum of Conversation, Department of State and American Embassy officials, Aug. 28, 1944; Commissioner of Immigration and Naturalization to Secretary of State, Sept. 22, 1944; Joint Memorandum of Conversation, Jan. 9, 1945, S.D. files.

[illegible] American Embassy to Department of State, March 21, 1945; Department of State to American Embassy, May 8, 1945, S.D. files; Del Guercio, "Some Mexican Border Problems," *op. cit.*, 292.

hastily constructed shacks began to menace public health and to make it harder for local laborers, many just returning from the armed forces, to find field work.[illegible] By mid-1946, organized labor and Mexican-American groups, which had remained silent during the war, began speaking out against the growing reliance on foreign labor. The director of the Immigration Service's Los Angeles district wrote in June, 1946:

> Complaints are pouring into this office. Typical is a letter just received from the "American Citizens' Club," an organization composed of United States citizens and veterans of World War No. II, who decry the situation in the Imperial Valley, alleging that these illegal entrants are not only depriving them of jobs, but are lowering the American standard of living. There are literally thousands of such aliens along the border area in this District and many more thousands in Los Angeles and vicinity.[illegible]

Consequently, the United States decided to force action on the wetback issue. One September 17, Ambassador Thurston drafted a lengthy note to the Foreign Office, blaming Mexico for the impasse at the border, and he warned that unless Mexico increased its border force, made more effort to prevent workers leaving home, and accepted at the nearest port of entry wetbacks picked up in the United States, the United States would abrogate the two wetback agreements.[illegible]

Foreign Minister Tello replied on October 8. He contended that Mexico was the aggrieved nation, having lost the services of its most enterprising workers, and that since American farmers and the United States profited from the existence of this pool of exploitable labor, solution of the problem was primarily an American responsibility. According to Tello, the problem might best be solved by economic measures. "Without presuming to suggest any action to the Government of the United States," he stated, "yet if the problem were attacked at its economic source, imposing sanctions on American employers who employ illegal entrants, the result would promptly come about that Mexican workers would not in the future embark upon a venture made both difficult and unprofitable." After hinting that Mexico had no objections to declaring inoperative the agreement of June 2, 1944, he concluded by expressing his government's intention of continuing to strengthen its border force and its willingness to receive at Tijuana and Mexicali, at a rate in keeping with Mexico's ability to haul them into the interior, those migrants who had left through the two ports.[illegible]

[illegible] American Consul at Mexicali to Department of State, Jan. 28, 1946; Attorney General to Secretary of State, July 1, 1946, S.D. files.

[illegible] Attorney General to Secretary of State, July 1, 1946, S.D. files.

[illegible] American Embassy to Ministry of Foreign Affairs, Sept. 17, 1946, S.D. files.

[illegible] Ministry of Foreign Affairs to American Embassy, Oct. 8, 1946, S.D. files.

American officials were unimpressed and even annoyed by the foreign minister's arguments. Except for the customary promise to strengthen an undermanned border force and a qualified promise to reopen the two Baja California ports, there was no indication that Mexico would increase its efforts to prevent workers leaving the country.[illegible] Yet, there could be no gainsaying the cogency of the Mexican contention that blame for illegal entry rested primarily with employers and with the United States as long as it refused to enact penalty legislation. Indeed, many of the same persons who regarded the foreign minister's note with disfavor saw some merit in the idea of sanctions but hesitated to promote it for fear of arousing the wrath of the farm block.

Thus, the two countries were not even remotely agreed on a solution to the problem. Owing partly to a genuine belief that the problem was more an American than a Mexican concern, and partly to opposition to the added cost of augmenting its border force and its disinclination to place further controls on its citizens, Mexico was unwilling to increase its efforts to keep the workers home and suggested that the remedy lay in American action against employers of wetbacks. The United States, wishing to dodge the sensitive issue of penalties and believing that Mexico was not carrying its share of the burden of enforcement, increased somewhat its vigilance along the border and demanded that Mexico do likewise.

In keeping with its pledges, Mexico soon authorized the return of one hundred wetbacks a day through Mexicali and Tijuana, and at the end of the year, the two towns were again crowded with stranded workers. Mexico thereupon requested another conference on border problems. Inspired partly by fear that the two ports would again be closed, Department of State and Immigration Service officials accepted the invitation, and discussions took place in Mexico City between January 27 and February 7, 1947.[illegible]

The meetings were taken up largely with discussion of two proposals advanced by Mexico. The first was the perennial demand that the United States penalize employers of wetbacks. The Americans, however, would agree only to recommend that it be made "the subject of further study." The second proposal had also been made before but, unlike the first, was welcomed by the United States: that the estimated one hundred thousand wetbacks be contracted at the border as braceros to

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[illegible] American Embassy to Department of State, Oct. 18, 1946, S.D. files.

[illegible] American Embassy to Department of State, Dec. 30, 1946; Department of State to American Embassy, Jan. 17, 1947, S.D. files.

assure them decent treatment and provide a brief respite from the pressing transportation problem. In April, 1946, almost a year after American officials had first rejected the plan, the Mexican government had expressed renewed interest in having wetbacks apprehended in the Imperial Valley put under contract, but having planned shortly to discontinue recruitment, the United States had left the centers inland instead of moving them to the border. In truth, with the war now over, many congressmen desired to cut, not expand, the bracero undertaking. Hence, at the Mexico City conference, the American delegation asserted that its government would be unable to obtain the funds required to guarantee one hundred thousand contracts but that it had no objections to a program under which workers would contract directly with employers, since such would not involve a government guaranty of living and working conditions.[illegible]

The protocol signed on February 7, 1947, stipulated that the one hundred thousand wetbacks be returned through the ports of Mexicali, Ciudad Juárez and Reynosa, where they might be processed for legal re-entry as farm laborers. Worker-employer contracts were to be negotiated with the permission of the Immigration Service, after the farmer had agreed to pay the costs of transporting the worker to the place of employment and back to the border. Since at least half the wetbacks were in Texas, farmers there were also to be eligible to participate in the undertaking.[illegible] However, those growers in Texas and elsewhere, who continued to use illegal entrants, were to be barred from further participation in this and the bracero program. Both governments were to continue their efforts to stay the northward movement by strengthening their border forces, a pious restatement of intentions that neither took seriously. Moreover, to halt the influx into Mexicali and Tijuana, Mexico was to forbid the sale of railroad and bus tickets at Puerto Peñasco, the only railhead into Baja California from the rest of Mexico. The United States, in turn, was to study the feasibility of imposing heavy fines on those hiring wetbacks. Finally, at the behest of the Mexican delegation, publicity was to be given the understanding in order "to arouse public opinion."[illegible] These stipulations were embraced by two

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[illegible] American Embassy to Department of State, April 4, 1946, Feb. 7, 1947; Department of State to American Embassy, June 5, 1946, S.D. files.

[illegible] The Mexican government wanted it understood, however, that it remained "firm in its determination not to permit, under the protection of existing conventions, persons of Mexican nationality to be contracted to work in States of the United States where there may exist discrimination against Mexicans, . . ." Hence, the Texas agreement, which was to supplement the major accord, "was not to constitute a precedent and was only to be temporary." *U.S. Stat.*, 80 Cong., 1 sess. (1947), Vol. LXI, Part 4, pp. 4106-4107.

[illegible] American Embassy to Department of State, Feb. 7, 1947, S.D. files.

agreements, one having general application and the other pertaining to Texas. Formalized by an exchange of notes dated March 10, 1947, the agreements superseded those of June 2, 1944; and January 9, 1945.[*]

At the conference table and again in the exchange of notes, American officials had reiterated their government's determination to remain aloof from the new undertaking.[*] The task of drafting an employer-worker contract was therefore left to the Mexican government. The document thus formulated was in many respects similar to the bracero contract, which had been reasonably satisfactory to Mexico. It provided for a minimum wage of thirty-seven cents an hour, unemployment compensation, an eight-hour workday, and the same housing, food, and medical care as was supplied to American laborers.[*] To insure the worker's return to Mexico, employers were to deposit $30.00 in the Bank of Mexico, repayment of which was to come from the worker's wages at the rate of 5 per cent a week. Enforcement power was lodged with an interdepartmental committee of the Mexican government, armed with authority to cancel the contracts of workers or employers.[*]

At first the farmers appeared satisfied with the agreement and most promised to co-operate fully in carrying out the undertaking. But their attitude changed when the terms of the contract became known. The $30.00 requirement elicited their most vehement protest. They insisted that a portion of the money should be refunded in the event the worker left before his contract expired. They were also provoked by the decision to establish only three recruitment centers, arguing the need for more if the demand for labor were to be satisfied. However, what they disliked most about the contract, though they did not say so publicly, were its wages and hours provisions, which critics of the bracero program had for years labelled socialistic.[*]

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[*] For the Agreements of March 10, 1947, see *U.S. Stat.*, 80 Cong., 1 sess. (1947), Vol. LXI, Part 4, pp. 4097-4100, 4106-4107.

[*] Department of State to American Embassy, March 5, 1947; American Embassy to Ministry of Foreign Affairs, March 10, 1947, S.D. files.

[*] The provision guaranteeing the worker the same housing, food, and medical care as that supplied to American laborers is typical of the verbiage contained in most of the Mexican farm labor agreements. Since medical care, for example, was not available to domestic farm workers unless they paid for it, presumably the Mexicans would have to pay. This being the case, it might be wondered why the provision was inserted in the agreement. It would appear the the growers and the United States government would not pay for medical care, and Mexico, anxious to demonstrate its solicitude for the workers, had to be content with this empty provision.

[*] A copy of the contract is appended to American Consul at Matamoros to Secretary of State, April 14, 1947, S.D. files.

[*] American Consul at Reynosa to Department of State, April 8, 1947; Memoranda of Conversations, South Texas farmers and Department of State officials, April 8 and 11, 1947, S.D. files; American Consul at Ciudad Juárez to Secretary of State, April 10, 1947, files of

Disgruntled, the farmers set out to wreck the undertaking. They appealed to the American government to intercede with Mexico to have the contract replaced by a "white crossing card," which would have removed all governmental restrictions and allowed the workers to remain in the country as long as they were needed, after which it would have been up to immigration officials to seek them out and return them to Mexico. They were informed, however, that the contract had been devised solely by Mexico, which had long been opposed to the issuance of border crossing cards. Some growers then made public their intention of going to Mexico City to confer personally with Mexican officials, but the Mexican government immediately made it clear that farmers would be received like any other foreign citizens but not as representatives of American farm organizations. Others tried to persuade Mexican consular agents at the border to revise the contract, but they were told that it could be changed only at the top level. Some even threatened to ignore the Mexican government and send their recruiting agents into northern Mexico. Most, however, favored a boycott of the processing centers.[illegible]

The centers were opened on April 10, 1947, as scheduled, and no farmers were on hand at Reynosa. By July 1, only 7,181 workers had been processed at Ciudad Juárez; by mid-September, only 31,000 wetbacks all told had had their status "legalized."[illegible] Furthermore, the contracts of those processed were often violated. Some growers refused to pay the guaranteed wage, offering the old wetback wage as the contract rate. In other instances, on-farm housing was inadequate and sometimes nonexistent.[illegible] More significant, as Mexico feared, the program increased rather than decreased the flow of workers northward. Even before the centers were opened, laborers from the Mexican hinterland had begun pouring into the three border towns. In March, 1947, following the issuance of premature reports by the Imperial Valley farmers, Mexican nationals from both sides of the border converged on Mexicali. Those already in the valley returned to be processed under

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the Office of Foreign Agricultural Relations, Department of Agriculture, in the National Archives, Washington, D.C.

[illegible] Memorandum of Conversation, Department of State and American Embassy officials, March 31, 1947; Memorandum of Conversation, Texas Congressman and Department of State officials, April 5, 1947; American Consul at Reynosa to Department of State, April 10, 1947, S.D. files.

[illegible] American Consul at Reynosa to Department of State, April 10, 1947; American Consul at Ciudad Juárez to Department of State, July 2, 1947; Commissioner of Immigration and Naturalization to Secretary of State, Sept. 19, 1947, S.D. files.

[illegible] American Consul at Ciudad Juárez to Department of State, May 20 and 28, 1947, S.D. files.

the agreement; those from the interior of Mexico arrived over the Puerto Peñasco railroad. "If this traffic is not stopped," the American consul there declared, "the situation which the agreement hoped to eliminate will be exaggerated."[illegible]

In a futile effort to discourage workers from migrating, the Mexican government issued a decree forbidding the contracting of those who had been in the United States less than three months and those whose homes were in the Mesa Central and had migrated to Mexicali and Tijuana over the Puerto Peñasco railroad.[illegible] The decree failed to alter the situation. Workers who had been in the United States less than three months merely declared themselves to have been in the country longer, and residents of the interdictive areas simply refused to appear for processing. At the end of June, 1947, the consul at Mexicali aptly summarized the workings of the program as follows:

> 1) It is drawing many people towards the border from the interior of Mexico, who would not have come otherwise. 2) It is raising a group of "coyotes" who are fleecing ignorant Mexicans in Mexicali upon promises of employment. 3) It is causing an increase in line-jumping by Mexicans who hope to qualify for admission under the agreement by being employed on ranches in the Imperial Valley and thus be entitled to processing under the agreement. Many more are entering the Imperial Valley as illegals than are being processed under the "wetback agreement."[illegible]

In the meantime, Mexican authorities had grown increasingly impatient at the farmers' intransigence and at what they regarded as half-hearted efforts on the part of the Immigration Service. The climax came early in September in the El Paso area. From the opening of the center at Ciudad Juárez, farmers around El Paso had refused to pay the workers more than the wetback wage of thirty cents an hour. At first, Mexico, eager to have the migrants contracted, had acquiesced, but by midsummer, when no effort had been made to raise wages, it had decided to terminate the contracts unless the stipulated wage were paid. Warnings to this effect went unheeded, however, and on September 19, after local farmers had refused to repatriate or recontract at thirty-seven cents those whose contracts had expired, the director of the Ciudad Juárez center severed relations with the El Paso Cotton Growers' Association. One month later, Mexico abrogated the Texas agreement, having written off the entire undertaking as a dismal failure.[illegible] When the agreement of March 10 expired at the end of 1947, it was not renewed.

[illegible] American Consul at Mexicali to Department of State, March 21, 1947, S.D. files.

[illegible] American Consul at Ciudad Juárez to Department of State, April 14, 1947, S.D. files.

[illegible] American Consul at Mexicali to Department of State, June 28, 1947, S.D. files.

[illegible] American Consul at Ciudad Juárez to Department of State, May 29, June 2, Sept. 19 and 24, 1947; American Embassy to Department of State, Oct. 16, 1947, S.D. files.

The purpose of the program had been to curb clandestine crossing and to protect the workers against gross injustice. Ironically, the methods used to achieve these laudable objectives contributed importantly to the collapse of the undertaking. On the one hand, knowledge that contracts could be obtained merely by lying about the length of time they had been in the United States encouraged migrants to enter unlawfully. On the other hand, the steady influx weakened the contractual guarantees, for the existence of a reservoir of cheap labor and the absence of any effective penalty for hiring wetbacks facilitated noncompliance with the agreement. What the program did was to foster lawbreaking. Under the bracero program, the worker had to run the gauntlet of quotas, physical examinations, and security checks; under the wetback program, he had only to enter the United States to receive legal status as a farm laborer.

In the final analysis, neither government had been sufficiently interested in solving the wetback problem. To be sure, Mexican policy was greatly influenced by internal politics. As an American participant said of the bilateral conference of early 1947: "The discussions seemed to reveal that the Mexican attitude was prompted more by intent to present to the public evidence of efforts to improve the lot of the farm workers than by anything else."[illegible] At the same time, however, Mexican officials earnestly believed the problem to be largely an American one, requiring American solutions, and that justice dictated that the wealthy United States and not their impoverished country should police the fifteen-hundred-mile international boundary.

Clearly, most of the effort toward a permanent solution would have had to come from the United States. The United States could not plead poverty; neither could it in all honesty claim a monopoly of public virtue. The border patrol, though more active than before the war, was kept woefully undermanned and was under constant pressure from farm interests to temper duty with expediency. Similarly, fear of antagonizing the farm bloc prevented government officials from attempting to mobilize public sentiment in favor of legislation to penalize employers of wetbacks.

Though often forgotten, the wetback problem was part of the larger problem of seasonal farm labor in the United States. A truly effective attack on the component problem would therefore have involved not only strengthening the border patrol and enacting legislation making it a crime to hire wetbacks, but taking steps to assure to all domestic

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[illegible] American Embassy to Department of State, Feb. 7, 1947, S.D. files.

and foreign laborers in the fields of the United States working and living conditions at least equal to those guaranteed to braceros. Some localities, perhaps, would still have had difficulty obtaining sufficient labor from domestic sources. But the inclusion of farm labor in social security legislation would certainly have lessened the need for Mexican nationals and shielded all who came from mistreatment. A realistic solution to the problem would also have involved making braceros available wherever needed, obviating dependence on illegal entrants. Several more years were to pass, however, during which it often seemed as if the "whole nation of Mexico" was crossing the border, before the United States was to combine vigorous with conciliatory measures that would finally abate the wetback influx.

29.

From

CONGRESS and the NATION

1945-1964

A Review of Government and Politics
in the Postwar Years

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Mexican, Foreign Worker Programs

The Immigration and Nationality Act of 1917 contained a provision permitting foreign workers to enter the U.S. for farm and other temporary work under certain conditions. A similar provision (8 USC 1101a15h) was written into the McCarran-Walter Immigration Act of 1952 (PL 82-414), which superseded the 1917 Act.

Under these basic authorities, small groups of Canadians, British West Indians, Bahamians, Basques, Filipinos and other foreign workers regularly entered the U.S. for farm work. Under the same authorities, supplemented by periodic international agreements between the U.S. and Mexico and by the 1951 Mexican farm labor law (PL 82-78), larger groups of Mexican workers began entering the U.S. during the Second World War for temporary farm work. Special legislation, in addition, permitted certain Basque shepherds to enter the U.S. and remain permanently.

The Mexican workers made up by far the largest group of foreign workers. Called "braceros," the Mexicans were employed chiefly in cotton, vegetable and fruit work in Texas and California and, to a lesser extent, on the same type of work and also on sugar beet cultivation, in Arizona, Arkansas, New Mexico, Colorado and Michigan. Small numbers were used also in several other Western states.

As the 1950s progressed, labor, welfare and church spokesmen began charging that "braceros" competed with domestic migratory farm workers for jobs, and were so easily obtained by farmers though Labor Department auspices that they constituted a pool of cheap, docile foreign labor undermining wages and working conditions for native Americans. The result was continuing efforts, which finally succeeded, to restrict work Mexicans were permitted to do and to make it more difficult for farmers to obtain "braceros" or to kill the program.

A collateral problem was illegal entry of Mexicans wading across the Rio Grande in order to work on farms

Foreign Farm Workers, 1942-64

The number of foreign contract workers entering the U.S. for farm work from 1942-64 is shown below. "Other" includes Filipinos, Canadians, British West Indians and several other nationalities. The column at right shows the number of apprehensions by the U.S. Immigration and Naturalization Service of Mexicans illegally entering the U.S. In most cases, such apprehensions involved "wetbacks" seeking farm work. Frequently, the same person was arrested several times during a single year, and each such arrest is counted as an apprehension.

Calendar Year	Mexicans	Other	Total	Apprehensions of Mexicans
1942	4,203	--	4,203	NA
1943	52,098	13,526	65,624	8,189
1944	62,170	22,249	84,419	26,689
1945	49,454	23,968	73,422	63,602
1946	32,043	19,304	51,347	91,456
1947	19,632	11,143	30,775	182,986
1948	35,345	9,571	44,916	179,385
1949	107,000	5,765	112,765	278,538
1950	67,500	9,025	76,525	458,215
1951	192,000	11,640	203,640	500,628
1952	197,100	13,110	210,210	534,538
1953	201,380	13,941	215,321	875,318
1954	309,033	11,704	320,737	1,075,168
1955	398,650	13,316	411,966	242,608
1956	445,197	14,653	459,850	72,442
1957	436,049	19,156	452,205	44,451
1958	432,857	14,656	447,513	37,242
1959	437,643	17,777	455,420	30,196
1960	315,846	18,883	334,729	29,651
1961	291,420	18,955	310,375	29,877
1962	194,978	22,032	217,010	30,272
1963	186,865	22,353	209,218	39,124
1964	177,736	22,286	200,022	48,844

in the Southwest (they were called ''wetbacks''). Partly because orderly procedures for importation of Mexican contract labor were provided under the 1951 Mexican farm labor law, partly because importing or harboring wetbacks was made a felony in 1952, and partly because the Immigration Service improved its border patrol (''Operation Wetback'') with funds finally voted by Congress, the ''wetback'' influx was substantially reduced during the later 1950s.

Legal use of Mexicans also fell off toward the end of the 1950s and early 1960s, largely because of increased mechanization of the cotton plantations of the Southwest. (See chart ''Foreign Farm Workers'') The Mexican farm labor program expired Dec. 31, 1964.

LEGISLATIVE CHRONOLOGY

Background. Because of an acute wartime farm labor shortage, the U.S. Government concluded agreement with Mexico in 1942, 1943 and 1945 for entry of Mexicans into the U.S. for temporary farm work. Under a special 1943-47 wartime farm placement program, administered by the U.S. Department of Agriculture, the U.S. Government paid all the costs (sometimes as much as $200) of transporting the Mexican ''braceros'' to farms in the U.S., as well as medical and housing costs for the braceros. Funds for this program were appropriated in the Farm Labor Supply Appropriations Acts of 1943 (PL 78-45), 1944 (PL 78-229 and PL 78-529), 1945 (PL 79-269) and 1946 (PL 79-521). The special program was scheduled to expire June 30, 1947.

1947 **Special Program Extended (HR 2102--PL 80-40).** A measure signed into law April 28 extended the special wartime placement program for six months, through Dec. 31, 1947. Supporters said farm labor was still so scarce that extension of the wartime program was essential to harvest the 1947 sugar beet, fruit and vegetable crops. Opponents said the real aim was to get cheap Mexican labor for another six months with the U.S. Government paying for transportation, medical and housing costs. On the major test roll call, the bill easily cleared the House March 4 on a 243-110 roll call.

On Jan. 1, 1948 the special wartime program was ended and responsibility for all farm placements reverted to the U.S.E.S., where it had previously been located except for the 1943-47 wartime period.

1951 From 1948-51 entry of Mexican workers continued under new U.S.-Mexico international agreements concluded in 1948-49, but under different conditions from the wartime program. While U.S. farmers were able to obtain braceros under terms specified in the international agreements, they paid all transportation and recruitment costs themselves. The U.S. Government did not do actual recruiting. If the Labor Department certified that American farm workers were scarce in a given area, farmers from that area could go to Mexico and recruit Mexican workers at depots set up by the Mexican government.

Mexican Farm Labor Law (S 984--PL 82-78). The 1949 U.S.-Mexico agreement on Mexican workers was scheduled to expire June 30, 1951. In negotiating a new agreement in 1951, the Mexican government insisted that henceforth, recruiting be handled directly by the U.S. Government, and that the U.S. Government supervise the program in the U.S. and see to it that farmers complied with the terms of their contracts and did not cheat the braceros on agreed-upon wages, conditions of labor, etc. Largely to give the Labor Department clear statutory authority to handle recruitment itself and to supervise performance of contracts by farmers, Congress enacted the Mexican farm labor law in 1951. The bill passed the Senate by voice vote May 7, the House by a roll call of 240-139 June 27, was cleared after conference June 30 and signed into law July 12.

● PROVISIONS -- The program was to be administered by the Labor Department, through the U.S. Employment Service and its Farm Placement Service. Before a farmer could receive braceros, the Labor Department was required to certify that there was a shortage of American farm labor in the area; that the farmer had attempted without success to recruit native American farm workers at wages comparable to those offered to Mexicans; and that the use of braceros would not adversely affect wages and working conditions of native American farm workers. These provisions were intended to protect American farm workers from wage and job competition from braceros.

Once these certifications had been made, the procedure was as follows: the Mexican government set up depots within Mexico at which Mexicans willing to work in the U.S. were gathered. There, the applicants were examined for health, type of work sought, etc., by U.S. officials. The Labor Department then transported the Mexican workers to reception centers on the U.S. side of the border. There, American farmers certified as eligible to use Mexicans signed a standard work contract with as many of the Mexicans as they needed. Signing of the contract by the braceros was voluntary and was supervised by U.S. officials. The contract specified wages and working conditions and its performance was guaranteed by the Labor Department. At a minimum, the farmers were required to pay the braceros the prevailing wage in their locality for the work they did, to provide free accident insurance, free housing and free transportation to and from the job to the U.S. reception centers, and to guarantee the braceros a minimum number of of days work. The U.S. Government was paid up to $15 for each worker a farmer used to help cover its costs. PL 82-78 was to expire Dec. 31, 1953.

1952 **Anti-Wetback Law (S 1851--PL 82-283).** Signed into law March 20 was a measure making it a felony, instead of a misdemeanor, to aid anyone to enter the country illegally, or to harbor or conceal an illegal entrant. The bill permitted Immigration Service officers to search private property, but not homes, within 25 miles of the border for illegal entrants without first obtaining a warrant. It specified that employment of someone who entered illegally did not in itself necessarily constitute ''harboring.'' The measure was aimed at unscrupulous individuals who assisted ''wetbacks'' to enter the country illegally for farm work. Sen. Paul H. Douglas (D Ill.) offered an amendment designed to make farmer connivance in illegal entry of ''wetbacks'' more difficult. The Douglas amendment would have made it a felony to employ an alien suspected of having entered the country illegally. It was rejected by the Senate Feb. 5 on a roll call of 12-69 (D 9-37, R 3-32).

1953 **Law Extended (HR 3480--PL 83-237).** The basic Mexican farm labor law was extended for two more years, through Dec. 31, 1955. The extension bill (HR 3480) was passed April 15 by the House, 259-87 (D 103-61; R 155-26; Ind. 1-0) and July 6 by the Senate by voice vote. The conference report was cleared Aug. 1 and the bill was signed Aug. 8.

1954 **Dispute with Mexico (HJ Res 355--PL 83-309).** The 1951 U.S.-Mexico international agreement on the Mexican farm labor program expired Jan. 15, 1954. Mexico complained that prevailing wage determinations by the Labor Department were too low. Since 1951, Mexico had refused to permit braceros to enter for work at less than 50 cents an hour, regardless of local prevailing wages. It now said that the proposed renewal of the agreement should permit Mexico to fix minimum wages for braceros in different work in different areas. U.S. rejection of such a provision blocked renewal of the agreement.

In Congress, farm-area Members pushed through an amendment to the basic 1951 law which permitted the Labor Department to recruit workers at its border stations even if the U.S.-Mexico agreement were not renewed. Instead of obtaining the workers at depots in Mexico established by the Mexican government, the Labor Department would simply receive them at the border. The amendment, embodied in HJ Res 355, was attacked by Sens. Hubert H. Humphrey (D Minn.) and Herbert Lehman (D N.Y.) as intending to blackjack the Mexican government into backing down on its demands. They said the amendment would invite braceros to enter the U.S. at the border stations even though the Mexican government might declare this illegal.

Backers of the amendment said it merely permitted a legal program -- under Labor Department supervision and guarantees -- to continue without Mexican cooperation. Otherwise, they said, "wetback" traffic would increase enormously.

A motion by Rep. John Shelley (D Calif.) to recommit HJ Res 355 failed March 2 in the House on a 156-250 (D 114-85; R 42-164; Ind. 0-1) roll call. The Senate passed the bill March 3 by a roll call of 59-22 (D 17-21; R 42-1). The bill was signed March 16. Just before it was signed, the State Department March 10 announced that agreement had finally been reached with Mexico on a compromise agreement permitting Mexico to "protest and present evidence" when it thought a prevailing-wage determination by the Labor Department was too low.

"Operation Wetback." The Immigration Service launched a concerted drive against illegal entry of Mexican "wetbacks." In the past several years, attempted illegal entry of Mexicans for farm work had jumped enormously, and in 1954 over 1 million Mexicans were apprehended in the U.S. as illegal entrants, most of them "wetbacks." (See chart)

1955 **Law Extended (HR 3822--PL 84-319).** A three-and-a-half-year extension of the Mexican farm labor law, renewing it through June 30, 1959, was enacted into law Aug. 9.

Before final passage, labor and welfare groups demanded reforms in the law in order, they claimed, to reduce competition for domestic workers from the braceros. They said the protective provisions of the 1951 law -- requiring a farmer, before being certified for receipt of braceros, to seek native American workers and offer them no less than the braceros would get for the same work, and refusing him braceros if their use would have an adverse effect on the wages and working conditions of native American farm workers -- were not achieving their purpose.

In some cases, they said, the braceros were getting no more than the 50-cent-an-hour minimum required by Mexico. Since native American workers could not work for so little, a farmer could easily meet the requirement that he had tried and failed to recruit them at no less than he would offer to braceros.

They also said the adverse-effect criterion, in practice, had meant that the Labor Department could refuse braceros to a farmer on such grounds only if their use meant wage scales for native Americans would drop, but not if it meant that the wage scales simply did not rise. In some localities, it was contended, use of Mexicans kept wages for native workers from rising year after year despite the fact that the over-all cost of living and general farm wage scales elsewhere were rising.

In order to improve living conditions for native American workers, the labor and welfare spokesmen said, the law should be amended to force farmers to bid higher for native Americans before being certified for use of braceros.

In the House, Reps. Victor L. Anfuso (D N.Y.) and Eugene J. McCarthy (D Minn.) July 6 offered amendments to HR 3822 backed by the labor and welfare organizations. The proposals would have required farmers to offer native Americans the same free housing, accident insurance and transportation benefits, as well as the same wages, required for braceros before they would be eligible to receive braceros.

Farm bloc spokesmen countered that the Mexicans were not really competing with Americans for jobs, since the Mexicans were used primarily for "stoop labor" that American farm workers refused to do. They also argued that requiring farmers to give native workers the same housing, transportation, etc., as given to braceros would be unreasonable. Mexicans were eager to get the kind of work offered them and were subject to deportation if they left a job and were not legally placed in another. They therefore were unlikely to leave a job before it was done. But native American workers were free to leave, and often did, at any time. A farmer who had paid their transportation and insurance costs would be out-of-pocket and left without workers at perhaps a crucial period in his production cycle.

The amendments were rejected July 6 on standing votes of 50-89 and 52-97. As finally enacted into law, HR 3822 (PL 84-319) made no changes in existing provisions of the 1951 law.

Anti-Wetback Funds. In the State-Justice-Judiciary funds bill (HR 5502--PL 84-133), Congress voted the Immigration Service $44 million, an increase of $5 million over the previous year. Most of the extra funds were earmarked for anti-"wetback" activities. "Operation Wetback" succeeded in closing the border to much illegal traffic, and apprehensions of Mexicans within the U.S. fell sharply. (See chart)

1958 **Law Extended (HR 10360--PL 85-779).** The Mexican farm labor law was extended for two additional years, through June 30, 1961.

1959 **Consultants' Report.** A four-member Labor Department consultants' group on the Mexican farm labor program Oct. 23 issued a report recommending major changes. The group was headed by ex-Sen. Edward J. Thye (R Minn. 1947-59). Other members were the Very Rev. Msgr. George G. Higgins of the National Catholic Welfare Conference, Chancellor Rufus B. von Kleinsmid of the University of Southern California, and Glenn E. Garrett of the Good Neighbor Commission.

- FINDINGS -- The group said 20,000 braceros were used on permanent work; braceros were increasingly used on skilled tasks; 60 percent of the braceros were used on surplus crops; and farm wages, although rising in the U.S. as a whole, tended not to rise in areas where braceros were used heavily.

- RECOMMENDATIONS -- The group said it was clear braceros were sometimes used not merely where there were labor shortages, but also in competition with domestic farm workers, and recommended moves to stop this: braceros should be restricted to temporary and non-skilled work; farmers should be required to make a real effort to recruit native Americans, including offering them housing, transportation, insurance and job-security guarantees equal to those given Mexicans, before being certified to receive braceros; the Secretary of Labor should be allowed to refuse to supply braceros not only in areas where their past use had reduced the local wage for native Americans, but also where use of braceros had prevented wages of native Americans from rising as rapidly as the state or national average farm wage.

Mitchell Regulations. Secretary of Labor Mitchell May 20 and 24 issued regulations guaranteeing British West Indians entering the U.S. for contract labor under the 1952 Immigration Act certain minimum standards of free housing and transportation, and tightening safety requirements for transport of braceros by farmers within the U.S.

Basque Shepherds

At the request of Sen. Pat McCarran (D Nev.), Congress in 1950, 1952 and 1954 enacted legislation authorizing permanent entry of Basque shepherds to work in the sheep ranges of the Western states. Similar legislation did not achieve final passage in 1956.

1950 -- Permanent entry of 250 Basque shepherds was authorized (S 1165--PL 81-587). In addition, permanent residence status was granted to 152 Basque shepherds who had entered as temporary workers from 1943-49 (S 1192--Private Law 81-1031).

1952 -- Permanent entry of another 500 shepherds was authorized (S 2549--PL 82-307).

1954 -- Permanent entry of still another 385 Basques was authorized (S 2862--PL 83-770). Subsequently, instead of Congress authorizing permanent entry of additional Basques, the Immigration Service acted under the temporary-entry provisions of the McCarran-Walter Immigration Act to establish a program for entry of temporary-status shepherds every few years.

1955-56 -- The House July 30, 1955 authorized (HR 6888) permanent entry of wives and children of Basques admitted under the 1952-54 laws. The measure was amended in the Senate to permit another 350 shepherds to enter permanently and to revise general immigration law and did not get to conference after Senate passage July 27, 1956.

1960 **Six-Month Extension (HR 12759--PL 86-783).** The House Agriculture Committee early in the year reported a bill (HR 12176) extending the Mexican farm labor program for two more years, through June 30, 1963. The measure also contained a separate provision barring the Secretary of Labor from regulating the wages and working conditions of domestic farm workers. This provision was designed to nullify a Nov. 20, 1959 order by Mitchell imposing certain prevailing wage and minimum working conditions for farm workers recruited through the Labor Department's Farm Placement Service. The regulations said that unless farmers agreed to meet the minimum conditions, the Placement Service would not provide them with workers. (For details, see "Wage and Hour Legislation," this subchapter)

The Mexican farm labor program was already under attack from labor and welfare groups who said use of braceros was undermining wages and working conditions for domestic workers. It soon became clear that the combined force of these groups and the Labor Department might be sufficient to block renewal of the program if farm-area Members insisted on the anti-Mitchell provision. For this reason, the provision was dropped and a new bill (HR 12759) simply containing a two-year extension was reported. In a countermove, Rep. John E. Fogarty (D R.I.) June 29 offered an amendment giving the Secretary specific authority to set working conditions both for Mexicans and native American farm workers, but this was rejected by the House on a 51-138 standing vote. The bill passed the House June 29 by voice vote. In the Senate, the labor and welfare groups' spokesmen did not have sufficient strength to write in any amendments. But they succeeded in blocking renewal of the 1951 law for more than six months (through Dec. 31, 1961) in order to get another chance, soon, to change the law. The House Sept. 1 agreed to the Senate version.

1961 **Extension, Changes (HR 2010 -- PL 87-345).** Labor and welfare groups and the Congressmen in agreement with their position now indicated that if the 1951 law was not amended to make it more difficult for farmers to obtain braceros, they would prefer to kill the law and altogether end imports of Mexicans. They said only then could native Americans hope to receive better wages and working conditions. They won endorsement by the Administration of the major recommendations of the 1959 consultants' report.

However, proposed Administration changes in the program were rejected both by the House Agriculture Committee and by the House itself when offered as floor amendments May 10 by Rep. Merwin Coad (D Iowa). The House May 11 passed a two-year extension bill (HR 2010) that made no changes in the 1951 law. The roll call was 231-157 (D 115-115; R 116-42). Most Northern Democrats voted to kill the bill and end the program.

In the Senate, the Agriculture and Forestry Committee adopted several of the less important Administration proposals. On Sept. 11, the Administration's major proposal, dealing with wages, was brought to the floor as an amendment to HR 2010 by Sen. Eugene J. McCarthy (D Minn.). It barred the Labor Department from supplying braceros to a farmer unless he agreed to pay them at least 90 percent of the average state or national farm wage, whichever was lower. This would have been far higher than actual wages in many low-wage areas. In effect, the amendment required farmers to bid higher for native American workers, since a farmer could not receive braceros unless he had first attempted to recruit native Americans at no less than he was required to pay braceros. Over strong farm-bloc opposition, the amendment was adopted, 42-40 (D 34-20; R 8-20). But it was dropped in conference and its backers failed in a small-scale end-of-session filibuster designed to kill the conference report and thus end the program altogether. The Senate passed the conference report Sept. 23, 41-31 (D 25-24; R 16-7). In signing the bill Oct. 4, the President said he did so reluctantly because native farm workers were still not sufficiently protected against competition from braceros.

● FINAL PROVISIONS -- The bill extended the program through Dec. 31, 1963 and included these new limitations (based on Senate Agriculture and Forestry Committee recommendations) on use of braceros: Mexicans entering under the program could not be used on work other than seasonal or temporary, could not be used to operate or maintain power-driven, self-propelled harvesting, cultivating or planting machinery, and were barred from certain processing, packing, canning and similar activities unless performed for the farmer raising the commodities. In addition, to be eligible to receive braceros a farmer was required to guarantee native Americans working for him sanitary and safety conditions equal to those provided braceros.

1962

Wage Determinations. By an administrative decision, the Labor Department March 30 put into effect some of the wage guarantees for domestic farm workers sought by the 1959 consultants' report and by the Administration's 1961 legislative proposals. In the past, the prevailing-wage determinations on which braceros' wage rates were based had been computed separately for different areas of each state. Henceforth, such determinations were to be used on certain statewide averages of farm wages. For areas with the lowest wages, the statewide averages were far higher than an area-average would have been. This meant braceros working in such areas would have to be paid more.

And, in effect, it also forced farmers to bid higher for the services of native American farm workers, since, under the 1951 Mexican farm labor law, a farmer could not be certified to use braceros unless he had first tried and failed to recruit American farm workers at wages no less than he was required to pay the Mexicans. The minimum hourly wages required to be paid braceros in different states, as announced May 30 by the Labor Department, were as follows:

Ariz.	$ .95	Iowa	$1.00	Neb.	$1.00	S.D.	$1.00
Ark.	.60	Kan.	1.00	Nev.	1.00	Texas	.70
Calif.	1.00	Ky.	.80	N.M.	.75	Utah	1.00
Colo.	.90	Mich.	1.00	N.D.	1.00	Wis.	1.00
Ill.	1.00	Minn.	1.00	Ore.	1.00	Wyo.	1.00
Ind.	1.00	Mont.	1.00				

The Department also said that when piece-rates were paid, hourly earnings at least equal to the above minimums also were required.

1963

One-Year Extension. The Mexican farm labor program was extended without any change for one year -- to Dec. 31, 1964 -- in a bill signed Dec. 13 (S 1703 -- PL 88-203). But the labor and welfare organizations demonstrated so much strength in their attempts to amend the program that future extension appeared to be in dobut.

Voting -- The House May 29 initially rejected, 158-174 (D 80-121, R 78-53), a two-year extension bill (HR 5497), which would have continued the program in effect until Dec. 31, 1965. Northern Democrats voted solidly (17-101) against the bill. A large number of Southern Democratic and Republican supporters of the program were absent.

Subsequently, the Senate Aug. 15 by a 62-25 (D 41-17; R 21-8) roll call passed its own bill (S 1703) which extended the program for one year, but amended it to include major changes favored by the Labor Department.

The amendment required a farmer, before he could obtain Mexican workers through the Labor Department, to first seek to recruit native American farm workers by offering them not only wages, hours and physical conditions of work at least equal to those which would be given to the braceros, but also comparable housing, transportation and work periods.

This change, sponsored by Sen. McCarthy (D Minn.), was adopted Aug. 15 on a 44-43 (D 36-21; R 8-22) roll call. Attempts to reverse the vote failed on a 45-45 tie vote (Vice President Johnson was not in the chamber and did not cast a deciding ballot). Opponents of the McCarthy amendment said it would make the Mexican farm labor program practically useless. Following Senate passage of S 1703, the House Oct. 31 passed, 173-160 (D 72-118; R 101-42), a House Agriculture Committee bill (HR 8195) extending the program for one year with no changes. S 1703 was then returned to the Senate with the provisions of HR 8195 in it.

Final action came Dec. 4, when the Senate agreed to the House provisions -- a simple one-year extension -- by a 50-36 (D 28-30; R 22-6) roll call. The McCarthy amendment was thus dropped. In submitting the bill for Senate action, Agriculture and Forestry Committee Chairman Ellender (D La.) promised he would not seek future extension of the program beyond Dec. 31, 1964. McCarthy said he did not oppose the program as such, but believed it should not be extended unless additional safeguards were included to guarantee that Mexican farm labor would not be used to undermine the wages and working conditions of native American farm workers.

The President signed S 1703 into law Dec. 13 (PL 88-203).

1964

Program Dies. No attempt to extend the life of the Mexican farm labor program was made in 1964, and, as a result, the program expired Dec. 31, 1964.

30.

Note from the Mexican Ambassador to the Secretary of State of the United States, June 21, 1963

EMBASSY OF MEXICO

The Ambassador of Mexico presents his compliments to His Excellency the Secretary of State and has the honor to inform him of the position of the Government of Mexico with respect to the decision taken by the House of Representatives of the Congress of the United States on May 29 last, rejecting the bill that would have authorized the executive branch of the United States to extend the international migrant labor agreement that expires on December 31 of this year.

The Government of Mexico considers that there would be no call for any observation whatever concerning the aforesaid action, had the need for Mexican labor that has existed for a number of years among the farmers in various parts of the United States disappeared, or if systems other than those used so far were available to meet that need. It is not to be expected that the termination of an international agreement governing and regulating the rendering of service by Mexican workers in the United States will put an end to that type of seasonal migration. The aforesaid agreement is not the cause of that migration; it is the effect or result of the migratory phenomenon. Therefore, the absence of an agreement would not end the problem but rather would give rise to a de facto situation: the illegal introduction of Mexican workers into the United States, which would be extremely prejudicial to the illegal workers and, as experience has shown, would also unfavorably affect American workers, which is precisely what the legislators of the United States are trying to prevent.

The Governments of Mexico and the United States have for many years been faced with the problem of the illegal entry of Mexican workers into U.S. territory in search of work. The maximum number of arrests made by the Immigration Service of the United States reached 803,618 in 1953, a year in which only 201,380 workers were contracted. Since that time the efforts of the two Governments to eliminate illegal entries, at the same time leaving the door open under the legal procedures of the international migrant labor agreement of 1951, produced the desired results, the number of arrests having been reduced to 31,106 in 1959, during which year 437,643 workers were contracted.

Despite the fact that in 1960 the number of contracted workers began to decrease markedly, the number of illegal workers did not increase, the conclusion being that the Mexican workers have understood and accepted the fact that if they cannot obtain work by contract, it is because they would not obtain it either by entering the United States illegally. Here are some pertinent data:

Year	Contracts signed	Deportation
1960	315,846	28,492
1961	291,420	31,350
1962	194,978	12,283

In the last 3 years there has been a considerable increase in the number of Mexican farmworkers who have applied for and obtained residence visas to come to the United States, through letters issued by farmers and growers in the United States who have offered them employment. It is estimated that no less than 32,000 farmworkers obtained their documents in 1961 and possibly some 40,000 in 1962. The statistics on the contracting during the last 5 years show that there were barely 50,000 jobs for the workers during the 12 months of the year, open at various times during the year and in various States, so that in order to be able to work without interruption during the entire year, it would be necessary for the workers to move from one place to another. Since it is impossible to achieve precision and coordination even with the means available to the two Governments, it is concluded that the aforesaid increased number of resident farmworkers do not have permanent work but in fact continue in their status as seasonal workers, working for an employer for 6 or 8 weeks and then returning to Mexico in the hope of being called upon to work for another short period—an operation that is repeated two or three times a year. As may easily be seen, this situation will create problems for both Mexico and the United States, since during the jobless seasons the worker with a residence visa will burden the economy on one of the two countries, with the same consequences of accepting ill-paid work, obtaining official assistance, etc.

There is good reason to believe that the absence of an international agreement governing temporary employment of farmworkers will lead to an increase in the types of migration pointed out above.

Finally, it should be considered that on various occasions when at international meetings on migrant worker problems representatives of the Government of the United States have indicated their purpose of decreasing the contracting until the elimination point is reached, the Mexican representatives have requested that an attempt be made to make the decrease gradually, in order to give Mexico an opportunity to reabsorb the workers who have habitually been working in the United States and thus to stave off the sudden crisis that would come from an increase in national unemployment. The stoppage of the contracts at the start of 1964 would leave approximately 200,000 persons out of work.

It is not considered that the contracting of Mexican workers under the international agreement has produced unfavorable effects on American workers. Quite the contrary. The benefits granted the contracted braceros, in the matter of insurance covering occupational accidents and illness, the extremely careful regulations on lodgings and transportation, and the constant inspection of food have provided a pattern that can be followed for domestic workers who lack such protection. And with regard to the wage increase obtained for Mexican workers on various occasions, chiefly in the year 1962, what was obtained through the effort of the Mexican Government and the cooperation of the Department of Labor of the United States, to such an extent that in some localities the wages are higher than those paid to domestic workers, represents the reason why this type of work is now looked upon as acceptable by the American workers.

It was precisely the presence of the "wetbacks" in the fields of the United States that created a situation undesirable from every standpoint, since those persons have not even the most elementary kind of protection and were the victims of exploitation in respect of wages, because they were forced to accept whatever pay was offered to them, and domestic workers were unable to compete and found themselves compelled to move to other areas. The lack of an agreement to facilitate contracting as long as there is a shortage of farm labor, which the Mexican workers have been covering, would tend to bring about a return to that situation. And although Mexico would make efforts to prevent it, as was indicated by the Secretary of Foreign Affairs of Mexico at a press conference on June 5, the willingness of American employers to give work to the wetbacks explains why in many cases the Mexican workers violate the law of the United States, and it is very important for the Government of this country to solve this problem.

The virtual extinction of discrimination against and segregation of persons of Mexican nationality in areas of the

United States where such practices once existed can decisively be attributed to the contracting of Mexican workers under international agreements. Th eneed for labor which only the Mexican could supply but which was not authorized for localities where special schools were maintained for Mexicans, or where they were segregated in restaurants, theaters, etc., and discriminated against in respect of wages, etc., led the authorities concerned to put an end to that situation.

There is no doubt that this has been a firm foundation for the good relations between the peoples of the two countrits.

In this connection, it is appropriate to note that in September 1954, the President of Mexico stated in his annual message to the Congress that efforts were being made to solve the difficult problem caused by the exodus of Mexican farmworkers, "acting in full and friendly cooperation with the Government of the United States in this task, in order that those who go to work may do so under the protection of existing agreements." And if indeed the contracting should come to an end, it is hoped, as the Secretary of Foreign Affairs said during the press conference mentioned above, that the two Governments will act vigorously and determinedly to prevent the illegal traffic of workers, which benefits neither Mexico nor the United States and is a constant point of discussion between the two Governments and the communities where the braceros who enter illegally work.

(Initialed).

WASHINGTON, D.C., *June 21, 1963.*

III. IMMIGRATION GOALS

Readings related to immigration goals are grouped into those relating to general and specific policy objectives, to the question of the numbers and criteria which will regulate the future admission of immigrants, and to the administrative structure for the overall management and operations of immigration law and policy.

A. POLICY CONSIDERATIONS

In "Illegal Immigration and the New Restrictionism," Otis Graham outlines the "liberal case" for a restrictionist immigration policy, based on what he sees to be the need for population limitation and the negative labor market impact of illegal migrants, particularly at the bottom of the labor market, and the related creation of an underclass. He concludes that immigration "increasingly becomes only a solution for a very few and delays the devising of solutions for the great mass of those whose lives will be spent not in physical escape but in learning to manage what they have."

Other current major policy considerations include the demographic and economic impact of legal immigration, and the issue of refugees. The chapter on immigration from the 1972 Report of the Commission on Population Growth and the American Future is included. In addition to its recommendations relating to the control of illegal immigration, the Commission recommended "that immigration levels not be increased and that immigration policy be revised to reflect demographic conditions and considerations." The economic impacts of immigration are discussed in a chapter reprinted from the Staff Report of the Interagency Task Force on Immigration Policy (1979). The issue of refugee policy is reviewed by excerpts from recent congressional reports on the Refugee Act of 1980.

The discussion of policy approaches and supporters by Charles Keely in *U.S. Immigration: A Policy Analysis* is included. Keely identifies "the three most salient policy perspectives vying for the attention of legislative reformers" as "adjusting immigration flows to labor force requirements, controlling population growth by limiting entry, and maintaining liberal family reunion and refugee admittance goals."

"The Migration of Human Populations" by Kingley Davis is included as background for the current policy debate. Beginning with the observation that, "Human beings have always been migratory," Davis takes a long view of the phenomenon of migration. He also examines the recent pattern of migration from underdeveloped to developed nations and asserts that "migratory pressure is perpetual because it is inherent in technological inequality."

"The Need to Modernize Our Immigration Laws" by Charles Gordon (1975) is also included. While there is disagreement on some of the policy decisions involved, there is general agreement on the need to modernize the Immigration and Nationality Act, originally enacted almost 30 years ago.

B. NUMBERS AND CRITERIA

Policy decisions in the area of immigration will translate primarily into determinations about the numbers of aliens to be admitted for permanent residence, and the criteria to be used in determining which aliens will make up these numbers. As background, three charts are included showing immigration to the United States, 1820–1978; immigrants admitted by classes under the immigration laws and country or region of birth, fiscal year 1978; and the availability of immigrant numbers for July 1980 (including a summary of the existing preference system).

The question of the appropriate criteria to be used in distributing immigrant visas is addressed in two selections. Visa distribution (prior to the enactment of the Refugee Act of 1980) is discussed in the *Staff Report* of the Interagency Task Force on Immigration Policy in the chapter entitled "Visa Allocation: Alternative Approaches." As an alternative to the current heavy reliance on family reunion, the report reviews an approach advanced by David North and Allen LeBel intended to provide a closer linkage between U.S. immigration policy and manpower requirements. In contrast, an approach proposed by Charles Keely in *U.S. Immigration: A Policy Analysis* would strengthen the reliance on family reunion, eliminating the occupational preferences.

C. ADMINISTRATIVE STRUCTURE

The administration and enforcement of immigration law and policy have recently been the subject of considerable criticism, and the possible reordering of the administrative structure is under consideration by the Select Commission. The final group of readings in this section consists of a brief description of the current administrative structure and the history of its evolution, and material on several past proposals for reorganization.

This section is prefaced by a chart entitled "Historical Outline of Major United States Immigration Statutes" from *Immigration Law and Practice* by Jack Wasserman. The principal agencies responsible for the administration and enforcement of immigration law are the Department of Justice's Immigration and Naturalization Service, and the State Department's Bureau of Consular Affairs. The allocation of responsibilities among these and other agencies and the history of Federal enforcement in this area are described briefly in the selection from *Immigration Law and Procedure* by Charles Gordon and Harry Rosenfield. This is followed by the section on "Organizational Structure for the Administration of the Law" from a law review article, "Necessary Administrative Reforms in the Immigration and Nationality Act of 1952," by Harry Rosenfield (1958).

In its 1953 report *Whom We Shall Welcome*, the President's Commission on Immigration and Naturalization recommended the creation of a new independent agency to administer the major immigration functions. They also recommended the "establishment of a new and permanent Commission on Immigration and Naturalization to have control and supervision over the entire field of immigration and naturalization." The discussion of these recommendations in the 1953 report is included.

A provision establishing a seven-member Immigration Board related in function to the immigration commission proposed in 1953 was contained in a Kennedy Administration bill in 1963 (S. 1932/H.R. 7700, 88th Congress), and is included here. A similar provision was included in the Johnson Administration bill introduced in the 89th Congress. However, it was not retained in the version of the bill enacted into law on October 3, 1965 (P.L. 89-236).

A more recent proposal for at least a partial reorganization of the administration of immigration law was included among the options set forth in a 1977 report by the Office of Drug Abuse Policy (ODAP), within the Executive Office of the President, entitled *Border Management and Interdiction: An Interagency Review*. The chapters outlining options, conclusions, and recommendations are included here. No action was taken pursuant to the ODAP report.

31.

A. POLICY CONSIDERATIONS

OTIS L. GRAHAM, JR.

Illegal Immigration and the New Restrictionism

I can recall a collective bet in the early nineteen-seventies when a group of friends wagered upon which pressing social problems would prove the most intractable as the decade went on. We selected the war, the imperial Presidency, the urban crisis, bad air, the arms race. I wish I had chosen illegal immigration. For we can now see that no problem of significant magnitude presents Americans with more mental and emotional difficulties, and there has been not only little discernible progress in confronting the issue, but a steady intensification of the problem. The decade has seen many, many migrants come across our borders, most of them either arriving or remaining illegally, probably at a rate which nets at least a million new people per year, with their families backed up in the countries of their origin. The volume of argument and the level of emotion have risen with the flow of people. Not since 1950-52, perhaps not since 1921-24, have we heard as much exclusionist sentiment. But there is an equal volume of argument that illegal immigration is no problem or that there are no acceptable solutions.

There are those who cringe at the necessity for such a policy debate, anticipating the mobilization of ugly passions. They recall that the restrictionist impulse of pre-World War I days and the early nineteen-twenties by and large had its source in nativist elements of the Anglo-Saxon middle class, with some support from organized labor and certain intellectuals much concerned with racial purity. Though the country has moved far beyond the racial attitudes of fifty, even twenty, years ago, there seems still to linger the assumption that restrictionist ideas must somehow derive from the reactionary side of the national character. My argument here will be that the restrictionist case can and must be articulated from centrist, and even liberal or radical, perspectives, and that it can be soundly based upon what, for want of a better word, we may term progressive social values.

In immigration matters this is a propitious time for reasoned discussion and for the construction of new and well-considered positions. For in policy terms we are stalemated. The Carter Administration has gingerly proposed some modest restrictionist reforms, but declines to press them until the 1980 election is past. In any event, Congress has not been disposed to accept Jimmy Carter's proposals. At both ends of Pennsylvania Avenue there is the suspicion that the issue is dangerous to politicians. The time-buying solution was to appoint a national commission to study and report its findings a month after the elections.

In Carter's administrative family there is division, most noticeably between a Mexican-American Commissioner of the Immigration and Naturalization Service (I.N.S.) who does not really think that illegal

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immigrants are a problem, and a Secretary of Labor of the opposite persuasion. And the political difficulties checking a realignment of policy are reinforced by analytical, administrative, and international ones.

Thus, we may have until early 1981, before anything will be done except talk, argue, and rethink in order to shape the potentially explosive policy debate that will inevitably come. In this simmering period of indecision, while present costs are preferred by policy-makers to new and unknown ones, with our policy in shambles and public opinion not well focused, we have the uneasy leisure to re-examine basic assumptions.

◆

If we could avoid the issue, we should all wish to do so. We are all descended from immigrants, Americans because of open borders. We are not eager to be the generation to close them. But our time for delay on the question runs short. We know some of the numbers of human demography, though we find it difficult to picture where the sand is in the glass. With our own population growing more slowly than ever before, we rarely translate the numbers and fertility rates of poor societies into mental pictures of the migration pressures building upon this attractive, open, and (in relative terms) resource-rich, "under-populated" nation. We may or may not know by heart that the population of Latin America and the Caribbean now reaches 350 million, that Mexico's sixty-four million will double in twenty years given her astonishing birthrate somewhere above forty per thousand with population growth at 3.5 per cent. Asian and African populations are growing at varying rates, their collective doubling times now predicted to be thirty-six and forty-one years from bases of 2.4 billion and 436 million, respectively.

If we know these astonishing numbers, we cannot picture adequately their explosive potential. We think of the nineteen-fifties and nineteen-sixties as decades of manageable population pressures upon the United States from abroad. Some do not find the nineteen-seventies much different, though the inflow of humanity began to quicken sharply in that decade. We continue to ignore or minimize the influx of human arrivals, heavier with every year, as rural populations the world over are displaced by capital-intensive development. We do not appreciate how word of our affluence spreads daily and ever-widely. We ignore even the words of the first non-alarmist to serve as Commissioner of the I.N.S., Leonel Castillo, who, in July, 1978, tried to tell us that migrants come now in great numbers by air as well as across borders, resourceful and fecund people responding to deepening streams of information, family ties, and the firm knowledge that the new home is economically receptive and ethnically pluralistic.

That tide of settlers, visible since at least 1970 in a mounting curve, may be expected to ebb as well as flow in response to economic conditions here and elsewhere. But fluctuations aside, the demographic launching pad is in place in every Third World or "Southern" nation for a thirty-year pressure of migrants upon First World or "Northern" societies. Even the most optimistic predictions of world-population stabilization do not promise an easing of the misery in the Third World before the end of this century. We are under siege, and, absorbing the early waves, we seem determined to ignore the arithmetic of human numbers. Demographic futures in the "sending" nations which supply our immigrants — illegal and legal — are well-known to specialists, but are not pondered by the rest of us.

Some still ask why intensified migrant pressures should force restrictions. Migration (illegal added to legal) to the United States was heavy by historic standards in the nineteen-seventies; indeed, it matched the heavy inflows of pre-World War I days. Yet we seem to have absorbed it. Indeed, we took some benefits, about which there is disputation, as well as some costs, equally controversial. Having survived handsomely, why not absorb migration and receive all these adult volunteer citizens through the nineteen-eighties and into the nineteen-nineties?

What is the restrictionists' answer? It comes in many forms, and to clarify this diversity is my principal concern here. Those who are not paying close attention, or who mechanically extrapolate from what little they remember of our history, usually assume that the restrictionists' case remains as it was in those very different days half a century ago when the limiting laws of 1921 and 1924 were being formulated and debated. Restriction is thought to be an essentially rightist impulse, combining the nativist effort to keep America predominantly white Anglo-Saxon Protestant with a general inclination to harass and intimidate those minority populations who did not come over on the Mayflower. And indeed there is a history from which to make such extrapolations. Restrictionism has been a special obsession of the nativist right. This was true in the eighteen-forties, in the eighteen-eighties and 'nineties, in the nineteen-twenties, all periods of our most intense concern with the issue. These years were the peaks in a dreary, abhorrent cycle of nativist fears of newcomers. No American can or should forget the ugly sentiments which large-scale immigration repeatedly provoked in some of the "native" (northern European origin) population. (And the immigration need not be large-scale for the reactionary impulse to feed upon it. The McCarran-Walter Act of 1952 reflected hysteria at the infiltration into our nation by subversives with a variety of un-American ideas, yet the volume of immigration at that time was relatively small.)

This history must not be allowed to mesmerize us, or to substitute for observation. True, there are still with us those who urge restriction out of what may appear to be motives of ethnic, racial, and class dislike, or feelings of cultural superiority. Yet these sentiments are quite muted, for the country is far, far from the openly racist operating assumptions of the nineteen-twenties and before. What might be called the conservative restrictionism of the nineteen-twenties dealt openly in concerns about "mongrel" and "inferior" races, "degeneracy," loss of racial purity and vigor, and so on. There is none of that talk in our public discussion today, and one has to be on the mailing list of the most extremist groups to read anything like it.

The conservative case now takes an economic form, arguing that illegal immigrants cause one-to-one job displacement (thus accounting for almost all of the seven to eight million unemployed) and impose heavy welfare costs upon honest taxpayers. But these charges have not stood up well upon examination, and if restrictionism rested on them it would carry little weight. There is some actual job displacement, but this is difficult to measure and few credit it with even one-quarter of the current unemployment total. In the five or six large cities where illegal immigrants have massed most heavily there are some sizeable costs to taxpayers due to school impacts. But on the whole illegals do not use "welfare" services very extensively, and perhaps pay more in taxes (including Social Security taxes) than they cost local governments in dollars. When amnesty is enacted, as it surely will be, then some large number of illegals will suddenly become legal. Perhaps the total will reach eight or ten million, depending upon amnesty provisions. Their families will then be eligible for entry, and the use of social services might sharply increase.

So, conservative restrictionism, prevented by the moral and political climate from making good use of any racial or ethnic arguments, claims that taxpayers are hurt and thus lays down a narrow and not overwhelming case for reform.

More substantial arguments for restriction of immigration are available. Two in particular are ethically well-grounded, have impressive empirical support, but are not well-understood in the country at large. They urgently need communication and clarification. One arises from considerations of the new population/resources/environment "problematique"; the other arises from the pursuit of racial justice and social equality in the United States. They point toward a restrictionism which neither derives from nor encourages racial or ethnic discord or ideological intolerance.

* * *

I am here concerned with two perspectives which give the case for strictly limited admissions a new ethical and intellectual underpinning. These are already making themselves felt in moving the debate onto quite different political and social ground than it occupied fifty years ago. The first is the broadening understanding that human population growth makes all of our problems more difficult, and must be curbed through some effective combination of individual and governmental action. This realization has penetrated American thinking with enormous difficulty, but it is by now widely accepted among whites of all social

groups, though the idea has little visible hold in the various minority communities.

There is neither the space nor the necessity to argue this matter here. Of course, one can still get an argument about it. There are those who, having driven across the "empty spaces" of Wyoming, assume that the United States, as contrasted perhaps with Bangladesh or Japan, has not begun to approach its carrying capacity, however that be defined.

The case for population limitation meets the traditional American resource-space optimism at several points with arguments I will list without elaboration. In a global perspective, growing populations on every continent threaten and undercut economic and social advancement, deplete resources, and work an awful damage upon land and oceanic and atmospheric ecology. The United States can hardly lead others to population stabilization without joining the handful of small Western European nations which have achieved that condition — and our own population, while slowing in growth, will never stabilize, given existing demographic trends.

Moving within our own framework, the case for domestic population stabilization — which was given reasonably cogent expression as early (or as late?) as 1972 in the report of the National Commission on Population and the American Future — rests upon several points: that each American imposes a vastly disproportionate drain upon world resources and environment because of our way of life, so that there may be "too many of us" even now*; that, international equity and uneven internal distribution aside, the carrying capacity of the United States is not yet known but may easily have been exceeded already until we fundamentally alter our energy habits, disposal of toxic chemicals and solid wastes, agricultural practices, and so on; that social requirements for space, privacy, and unspoiled wilderness areas are much greater than have been acknowledged; and that national security no longer demands masses of manpower for the defense of our frontiers.

These and other views, I repeat, are part of a dynamic argument. My point is that, while there will be refinements and shifts in emphasis in the population-limitation case, and obdurate resistance whatever that case, the case itself is persuasive to a growing number of Americans and has an irresistible momentum. That is because it is basically correct, and will remain so until and unless there come about fundamental changes in the modes of life in industrial societies or in planetary human demography itself.

Indeed, the more interesting argument on population stabilization has already shifted from "whether?" to "how?" and "how soon?"

Is stabilization best pursued directly and for itself, through birth-control efforts, or indirectly, by first securing social justice for the poor and especially for women? Let us set that complex argument to the side. If we pursued it, it would appear that we need to do both. Population limitation seems to emerge naturally as living standards go up and modernization proceeds, but in societies not yet across the demographic transition a state-guided program of family planning appears also to make a crucial contribution to fertility decline. In either case, those ardent for human progress must also be ardent for population limitation. The only quarrel may be over tactics. Let us try this formulation: those who are for population stabilization* are not necessarily humanists with vision; but all humanists with real vision are for population stabilization.

Is that statement too sweeping? Undoubtedly it is in 1979, but it comes close to the insight we require. The population issue, we know, has attracted a few of the self-centered and the confused. My point is that, increasingly and inevitably, it becomes the common ground of all the friends of human freedom and fulfillment. In the final three decades of North American slavery, a righteous and moral cause emerged — abolitionism. Abolitionists came in all shapes and forms — perhaps some held their views with intolerance and hatred, and many would not consider other social goods. Some abolitionists were not the most admirable people of their day. And some moral and enlightened people — Abraham Lincoln, for one — were not abolitionists. Yet in retrospect, abolition was a liberating, humane, progressive, and necessary idea, and tended to attract the best of a generation until, like opposition to the war in Vietnam, one vied with friends to backdate one's conversion. That, I think, is happening in the general commitment to an early balancing of human birth- and death rates, to bring human numbers into balance with resources and carrying capacity.

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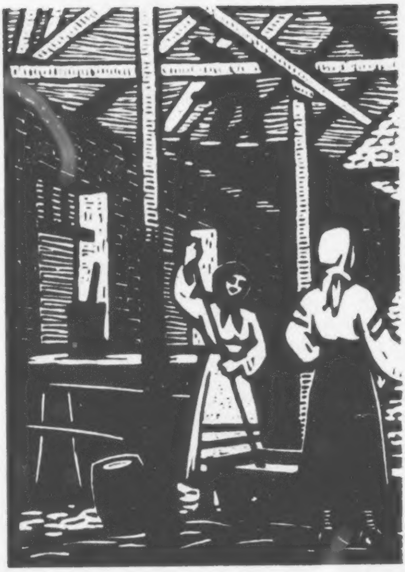
*Kingsley Davis and others have offered the estimate that about one hundred million Americans would represent our full population load, at optimal carrying capacity. The issue deserves intense investigation; prudence suggests early stabilization to preserve options until the issue is better understood.

*Why stabilization? Obviously, this is merely an interim goal, to be replaced by some population size which maximizes the preferences of society, rationally and deliberately arrived at. The concept of "carrying capacity" will undoubtedly prove indispensable here, though there are obviously many different ways to weight social variables in arriving at calculations of limits.

For those with that commitment, their imposing assignment is to define the goal and design the means in ways that do not fail or serve dehumanizing ends. There is an immediate step to take. Our nation, in order better to address its internal problems and to exert world leadership, needs a population policy which will join and influence its energy, economic, transportation, housing, and other policies. This would repair a critical gap in our governmental machinery and in our national thinking. If we had a population policy, we would go through our periods of floundering and ineptitude, but gradually we would firm that policy up, and move toward the interim goal of stabilization, giving ourselves time to learn how to manage this most problematic variable of which we are, understandably, so wary.

In this frame, anything that delays adoption of a population policy carries a burden of justification. A national population policy would probably take the form of a greater salience for the topic as evidenced by administration reorganization, a White House or executive office unit, a reporting cycle, a stronger research effort, and some statutory rhetoric. If not at the outset, the policy would probably in time include the goal of stabilization, the most tangible national goal we are likely to agree upon in the foreseeable future.

Having such a policy in place as a matter of both law and institutions, would not automatically tell us how to handle the immigration problem. But it would be incompatible with current flows of aliens into the United States and would reinforce the pressures to revise our immigration law and its administration in order to achieve an effective limit. Among the goals of immigration policy, stabilization would be included along with family reunification, a haven for refugees, labor-force needs, and others. In time, stabilization might even become paramount. Yet the necessity for restriction would not have derived from racial or ethnic dislikes, disguised as a taxpayers' revolt against heavy welfare costs. Restriction of immigration, like the other components of a population policy — e.g., universal access to family planning, information, and technology — should come in a climate of ethnic and religious pluralism and tolerance, gradualism, and recognition of the international impacts of immigration-policy reforms and the responsibility of Western societies for some part of the transformation of Third World economies.



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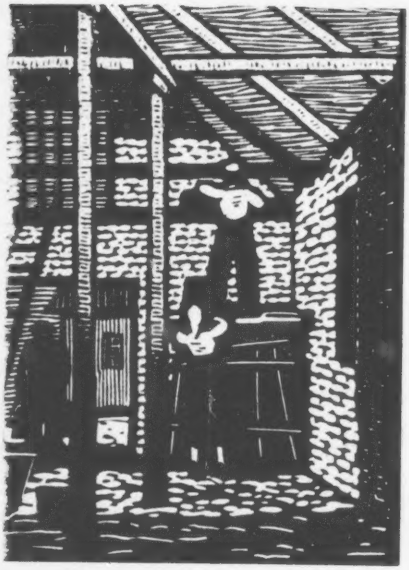
The second influence upon emerging alignments on the immigration question which promises to make a major difference is the labor-market impact of the alien labor force. This is brilliantly clarified in a recent publication, David North's and Allen LeBel's *Manpower and Immigration Policies in the U.S.* (February, 1978), a study done for the National Manpower Policy Commission. In a detailed analysis which is more comprehensive and more sharply focused on policy recommendations than any earlier



study of labor-market impacts of which I am aware, North and LeBel conclude that "the most significant consequence of illegal immigration appears to be the creation of a two-class society." They argue that some significant job displacement and a general depression of wages and standards are the inevitable results of the presence of large numbers of workers without rights of citizenship who work at the bottom of the labor market and unwittingly "create and maintain substantial inequities in what is supposed to be an egalitarian society." The presence of these workers lowers wages at the bottom, prevents change in basic structure of the secondary labor market,[*] skews income distribution in a regressive direction, and perpetuates a two-class labor force, in the authors' view. And they make the unassailable but little-noted point that such workers represent only a temporary solution, as their aspirations and those of their children will rise; and they will resent and in their turn abandon jobs formerly sought, leaving an unreformed secondary labor market to attract a fresh round of desperately poor people who will be the next underclass.

North and LeBel are convinced that Americans, white and nonwhite, would take such jobs themselves, coming off income-transfer programs, and out of lives of dependency and idleness, if wages and standards were raised. Along with this must go some careful tightening of income-maintenance programs in order to mesh that push influence with the pull of higher wages. They acknowledge that some industries would automate or close, but the vast majority, they feel, would survive the new labor costs, passing them on to the rest of us in the bearable costs of higher lettuce prices, or a dollar more per motel room for the maid. As they put it, it is time to end the current subsidy to consumers of lettuce and restaurant meals, and to some employers. Taking such measures at the bottom of the labor market would finally allow the United States to complete its stalled effort to allow all of our poor, especially minorities, to take at least an initial productive place on the economic ladder. It would permit the completion of the economic phase of the civil-rights movement, just as the legal phase was completed in the nineteen-fifties and nineteen-sixties.

The policy reforms North and LeBel urge include enforcement of limited admissions, combining this difficult step with recommendations for generous amnesty and for flexibility in setting annual quotas to permit officials to respond to economic trends as well as to non-manpower considerations.

Thus, the first major research effort to consider immigration from the manpower perspective[*] urges restriction, not simply in the interest of national economic efficiency but as the only way to extend economic opportunity to our own disadvantaged classes. The report may be read as a call to the civil-rights movement to complete its mission, a liberal logic for restriction.

It is difficult to overestimate the importance of

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[*] One should note here that one of the leading analysts of "the secondary labor market," Michael Piore of the Massachusetts Institute of Technology, takes the view of illegal immigration that it will end when the secondary labor market is destroyed by reforms of wages and working conditions. North, Vernon Briggs, and others reverse the order, arguing that these reforms cannot work until the pool of exploitable labor is greatly reduced.

[*] The over-all economic impact of immigration, as distinct from the more focused question of the manpower impacts, has of course produced a large literature. The most influential study may have also been the worst: volumes 6 through 28 of the 1911 Dillingham Commission Report. This monument to bias blamed the "new" immigrant for a variety of economic ills, including depressed wages, a high rate of industrial accidents, job displacement, and even depressions. Isaac A. Hourwich's *Immigration and Labor* (1912) exposed the lack of evidence behind all of these (and other) alleged economic impacts (see also Oscar Handlin, "Old Immigrants and New," in *Race and Nationality in American Life*, 1950), and economists and economic historians in recent years generally assume that the Dillingham arguments on economic impacts were not only unproven but invariably wrong. Studies such as that of North and LeBel thus work against a strong prejudice among labor market scholars, for they appear to be reviving the job-displacement argument of the discredited Dillingham era. Of course, they do not: they are studying contemporary immigration and the contemporary labor market.

North's and LeBel's argument. It revives, for those Americans who, for whatever reason of occupation or ideology, hold strong sympathy with the working class, a debate which was most intense among Socialists and Progressives in the years before World War I. On the question of immigration, American radicals were then divided and not a little confused. On the one hand, they were guided by Karl Marx's vision of an international working class, and were thus instinctively "open-border" advocates. On the other hand, they knew from long and frustrating experience that the continual arrival from Europe and Asia of masses of immigrants was an impassable barrier to working-class collective action. The endless arrival of relatively docile, impoverished people was to many radicals more important than any other factor in delaying the final reckoning of a militant working class with the exploitative features of American industrialism.

While the organized labor movement made a clear choice between these two perspectives — condemning immigration and adding its support to the movement which culminated in the laws of 1921 and 1924 — the Socialist Party could not decide. One group welcomed immigrants as brother laborers from abroad, but had a tendency to condemn Asian immigration as bringing to these shores a population which cost more than it added. Racial attitudes, not research, prompted this position. Another wing of radicalism suspected that the American Federation of Labor was correct, that all immigration in general was inimical to working-class aspirations in the United States. A working compromise emerged in Morris Hillquit's bridging resolution offered to a 1910 Socialist convention:

> "The Socialist Party favors all legislative measures tending to prevent the immigration of strikebreakers and contract laborers, and the mass immigration of workers from foreign countries, brought about by the employing classes for the purpose of weakening the organization of American labor, and of lowering the standard of life of American workers."

On the other hand:

> "The party is opposed to the exclusion of any immigrants on account of their race or nationality, and demands that the U.S. be at all times maintained as a free asylum for all men and women persecuted by the governments of their countries on account of their politics, religion, or race."

This official position, while it appears at first as an adroit straddle of incompatible commitments, is not without its consistency. Standing upon the conviction that mass immigration was both economically and politically harmful to the American working class, it came out for restriction, but not restriction based upon racial considerations. It would accept some controlled entry of political refugees.

Today's Left might well return to this position. Since the law of 1965 eliminated racial distinctions and continued the traditional practice of setting aside quotas for political refugees, all that remains for the Left to pursue is restriction of illegal immigration from a mass scale to a limited scale.

The Left today has a stronger research base for this position than the Socialists of pre-World War I days, in the work of North and LeBel, Vernon Briggs, Robert Birrell, the General Accounting Office, and others. The main victim of large-scale illegal immigration, this research confirms, is the unskilled domestic worker. It is difficult to see how American liberals and radicals can long continue their habit of either ignoring immigration, or assuming from instinct that illegal immigration is a poor people's movement and ought not to be tampered with or hindered. The restrictionist case should and will make converts on the left, as time brings reassessment.

* * *

Illegal immigration derives chiefly from eight or ten nations, and is composed not only of the Spanish-speaking from Latin America and the Caribbean (probably seventy to eighty per cent of the total), but also of blacks from Haiti and Jamaica, Orientals from Taiwan and Korea, significant numbers of Arabs, Filipinos, and others. It thus enlarges the size of what are still loosely called minority populations, and these are traditionally liberal in political inclinations and Democratic in voting patterns. If they develop no interest in restriction, it will have a weaker base in the liberal-Left coalition. What of the attitudes among blacks and browns?

Why the American black leadership has not been moved toward restrictionism by the evidence of economic competition at the bottom of the ladder defies adequate explanation. It is helpful to remember that historically the black community has not been much concerned with demographic issues and is not strongly influenced by conservationist ideas. There may also be an unexamined tendency of blacks to avoid issues which strain the uneasy Chicano alliance.

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Perhaps, too, the black who has thought about the issue assumes that the current new wave of immigrants will repeat the American pattern and lift the lowest group up into the middle class — though for decades that has not been a conspicuous result of the tides of new immigrants to this country. These are not very imposing reasons for the lack of concern over the illegal immigration of unskilled masses who depress wages and working conditions in low-skilled sectors. By all logic, the black position on illegal immigration should soon undergo the most dramatic shift along the entire spectrum of group attitudes.

The Mexican-American outlook on illegal immigration, unlike those of other groups I have so sketchily appraised, is more complex and understandably ambivalent, and it is not likely to change very much or very fast. Yet some shift is latent in the gap between Chicano public positions (private positions among Mexican-Americans are not so monolithic, and include troubled concern for the immigration issue) and the real self-interest of that community insofar as that may be perceived and permissibly commented upon by a mere fellow citizen. Mexican-Americans have many and overlapping interests in this question. But the interest they have so far not much debated openly is their position as disproportionate occupants of the secondary labor market. Upgrading the economic and social status of Mexican-American citizens is apparently made more difficult by a supply of other workers without rights, without the same wage or social expectations as native workers. This must be discussed, tested, and reanalyzed. The Mexican-American community may choose to absorb this cost out of ethnic solidarity; it may argue that it will be more than compensated for through the political power achieved through large-scale Mexican immigration; or it might reluctantly conclude that Mexican-American and Mexican immigrant interests tragically but fundamentally conflict, at least under current circumstances.

If the last perspective has influence, it leads toward acceptance of the idea of restriction, if it is accompanied by generous amnesty and is achieved by controls which do not burden citizens of Mexican descent. Too many sympathies run against restriction to permit that position to be embraced. This is natural, and indeed these sympathies allow the Mexican-American community especially to make a positive and indispensable contribution to the immigration discussion. But it would be in the long-run advantage of the Chicanos to moderate their position on the issue of restrictionist revision of U.S. immigration patterns. It is not healthy for ethnic relations in the United States for a group to appear monolithic on complex questions — though every group has incurred this risk by closing ranks in times of emotion and stress. And it is especially unhealthy if an ethnic group appears to take stands predictably in line with those of a government of a foreign power, finding no occasion to discern *any* American national interest in a move toward restriction. And it does not improve domestic ethnic relations when a minority group, whose motives may well be entirely defensive, favors continuation of an illegal trend which is frankly welcomed as increasing the Mexican-American political leverage so as to gain relative advantage by outbreeding other groups presumed to be rivals.

"Hostile" exclusion, as one sometimes hears the phrase, is in no one's interest, and indeed seems quite remote, especially with the passing of General Leonard F. Chapman's tenure at the I.N.S. In fact, exclusion itself is not possible, necessary, nor probable. Greater restriction, late or soon, is inevitable. Only the timing and manner of it are in dispute. It is critically important that the Left actively and positively influence both the timing and the manner.

As to timing, the sooner the issue is joined the better, for the passage of time merely intensifies the problems of population pressure and makes a relatively benign climate less likely. As to the manner of restriction, the influence of progressive elements in our society is required to make the restriction cordial, firmly based upon considerations of the public interest (which means a higher priority for population stabilization and for labor-market impacts), combined with unprecedented forms of economic development and population control assistance, and unswervingly rooted in a commitment to racial and ethnic pluralism. We must accept the idea that the size of the U.S. population must soon become stabilized; but American nationality must never be perceived as fixed in its ethnic or cultural components.

While I am issuing this unrequested invitation to all groups to join on that common ground, it would be helpful if the civil-liberties community — so important within the liberal Left, and so necessary to national judgment in these risky times — would move beyond its unthinking and semi-hysterical opposition to the idea of a national work card. It could then play a constructive role in designing the necessary safeguards. Perhaps a step in that direction would be for the American Civil Liberties Union and like-minded organizations to shift from an ignorant negativism on the national work card and study the experience with it in Western European democracies, so that we might improve upon their record.

* * *

One last reflection adds force to the restrictionist argument. Our State Department joins the Mexican government in warning of dire consequences within that nation if the border were to become a controlled border and movement across it effectively restricted.* "Dire consequences" seems to mean that the abject failure of a series of Mexican governments to so manage the nation's economic development as to offer jobs for willing citizens, and the abject failure even to acknowledge until very recently the tragic overpopulation of the nation — that these failures would become even more glaring to Mexicans with the closing-off of the escape hatch, so obligingly offered by the relaxed U.S. government to the north. The Mexican government might have political troubles, and that, rather than the ending of a source of earnings for Mexicans willing to immigrate illegally, may be the dire part of the consequences envisioned. Social misery, somewhat intensified, might finally rise to the level of effective political protest. If U.S. listeners to these warnings are not moved by the prediction of political troubles for the ruling political and economic oligarchy, then a military regime is predicted.

The State Department is right to insist that any shift toward tighter control of illegal entry be taken with extreme caution; and their case has been strengthened in some eyes by recently increased estimates of Mexican oil reserves. There are those who reject temporizing on the ground that we cannot know what direction Mexican internal affairs may take if we restrict entry, that we have no right to meddle, and that we ought to end our meddling by withdrawing our subsidy to Mexican elites. That subsidy, it is argued, is free access of their unemployed to the American job market, a safety valve for Mexican domestic discontent.

I concur in the identification of the subsidy, but not in the possibility of purity by ending it. We are, in too many permanent ways, meddling with each other now. Both the United States and Mexico are far from God and close to each other. Thus restriction must be accomplished gradually, and matched with generous offerings of trade concessions and imaginatively designed programs of aid for labor-intensive economic development. Informed readers know that the latter, at least, have little current prospect of Mexican acceptance, but this could change. Aid should be delivered in consultation with Mexican expertise, and/or multilaterally. Indeed, such steps might well be taken in the case of a short list of the nations sending us the largest numbers of immigrants, especially where extensive U.S. cultural or economic impact may be shown to be part of the problem of human dislocation.*

* * *

Solicitude for the adverse internal impacts of U.S. restrictionism should rest upon a recognition of our historic complicity in patterns of development, upon humanitarian concerns, and upon the trustworthy preference for doing something positive to get at the roots of problems rather than simply dealing with manifestations. It should not rest upon a dedication to the preservation of the places and privileges of the existing Mexican governors — political and economic. Here we must be good neighbors of cooperative national leaders, but hardly their allies against internal dissent or pressure.

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*Other people-exporting nations, especially in countries of the developing world with the most acute problems of overpopulation and economic slack, presumably would agree with the Mexican government's position and urgently request (or demand) that the United States not close off its access to their surplus populations. The Mexican government has been the most explicit, as it has faced the most pressure and in what follows I shall, for convenience, deal with the issue as the Mexican situation poses it, although of course other people-exporting governments ease their failures by winking approvingly at emigration. Their warnings usually object to the idea of a sudden tight "seal" of the border, but this is of course impossible and not suggested by anyone in a responsible position. Still, the warnings of dire consequences presumably would apply to the idea of limiting Mexican northward migration to perhaps a doubling or tripling of current legal quotas. While on the subject, it is instructive to note that the immigration policies of the Mexican (and many other) governments are decidedly less liberal than our own.

*This raises the question of whether, in the words of William and Elizabeth Paddock, "we don't know how" to design effective foreign aid programs, something we will not become entangled with here. I incline toward the view of those who argue that it would not be difficult to design an aid program which made a more socially beneficial impact upon economic development by far than the current huge "foreign aid" program represented by the remittances sent home by illegal immigrants. These have been estimated to amount annually to from one to ten billion dollars from the estimated three to twelve million illegal immigrants. These remittances certainly arrive in the hands of impoverished people, but are arguably spent upon basic necessities and rent/interest payments to entrepreneurs, and do not contribute to any sort of transformation of rural or national economies in their native lands.

It seems odd to me to observe the solicitude for the Mexican industrial-financial-landowning-political elites which is so loyally offered by young Mexican-Americans, and even American radicals, with whom I discuss this issue. Virtually unlimited immigration into the United States, which is now U.S. *de facto* policy, helps buy time for an oligarchy and a system in which for thirty-five years (since 1940), in Wayne Cornelius' words, "there was probably no real income gain for the poorest forty per cent of Mexicans."

It is curious to me to find so many individuals of self-professed radical sentiments who choose to continue to offer an escape valve which harms the American lower classes and puts off the necessity in Mexico for facing the tragic inequalities in opportunity and the lack of social progress which characterize recent Mexican history. One would have thought they would prefer to take all measures to force an early reckoning with system failures. Can the answer be that they choose short-term and temporary relief for a handful of Mexico's millions — those leaving their homeland — rather than fundamental reforms? Certainly not; apparently they do not believe the choice is required, and favor both. But there is a case, worth more discussion, that the relief is functionally related to the maintenance of the system they would radically alter.

So much for those of radical inclination. Gradualists accept the Mexican officials' argument, that they need another generation of our human escape hatch while they deal with both economic development and population growth. This requires one to judge whether their efforts are good-faith efforts and whether they are backed by the required urgency and skill. Either way, we find ourselves deciding how to play our role as analysts of and meddlers in Mexican development, not whether to play that role.

Of all the implications of the immigration issue, this is the most salient, to my mind. A handful of societies abroad rear half the next generation of Americans, and send them here to impact our labor market, schools, urban centers. Reciprocity! We must clarify and select our choices for meddling in return, for the choice of pretending not to interfere is increasingly understood to be a mirage wrapped in the comfortable rhetoric of the sovereign independence of nation-states. It is time to value consistency more

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Mr. Graham's Loyalty Test for Chicanos

By Vic Villalpando

The Center for the Study of Democratic Institutions has invited me to respond to Otis Graham's article. While I am in agreement with much of Mr. Graham's analysis and share his deep concern for the social, demographic, and economic dimensions of the illegal immigration issue, the article contains a contortion that is calculated to appeal on emotional grounds. Mr. Graham's perspective about Chicanos is erroneous. Contrary to his belief or comprehension that Chicanos are monolithic on the illegal immigration issue, Chicanos *have* taken various positions, each according to his individual view and as part of a heterogeneous population. Some Chicanos oppose illegal migration from Mexico. Some advocate an open border between the United States and Mexico. Others propose a well-regulated and controlled border. Still others are ambivalent.

Nonetheless, it appears that Mr. Graham is not content with this situation and insists that Chicanos have taken a monolithic stand. According to Mr. Graham, failure by Chicanos to take a stand against illegal migration makes their loyalty to America suspect. His ploy is to project Chicanos and Anglos embroiled in a future bitter cultural conflict somewhat like the present separatist struggle between French and English Canadians. He further questions the fidelity of Chicanos by challenging them to brandish their patriotism for America by taking a monolithic stand *against* the Mexican illegal migrant.

The crux of my concern is not just over the efficacy of Mr. Graham's allegations, but also for the danger that it represents for Chicanos. Such a position breeds hatred not only for Chicanos, but also for all Hispanics who fit the Latino stereotype. Even if Mr. Graham's illusionary loyalty test for Chicanos never comes, hate for them can be the self-fulfilling prophecy based on his notion.

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highly in our attitudes toward national sovereignty. One is not impressed when individuals argue that the U.S.-Mexican border is a fiction and that the two societies have merged along a two-thousand-mile front and share a common fate; and then without a new breath respond to suggestions for gentle U.S. pressure to encourage Mexican birth-control efforts with resounding affirmations of pure national sovereignty.

Paradoxically, the illegal immigration issue both reinforces the traditional nationalism of the nation-state, and at the same time erodes it in favor of shared responsibilities and compromised autonomy among states. For while the need to protect national living space and the domestic work force heightens a separate sense of national interest, as against the claims of outsiders to invade at will and share the bounty, responsible efforts to deal with causes as well as symptoms leads inevitably to the recognition of common involvement with international problems and the partial irrelevance of borders.

The new restrictionism will require a viable moral as well as a political base. I have tried to clarify some of the perspectives which form such a base. The moral center of the new restrictionism is the ability to see beyond the immediate self-interest of a group we glimpse only in small daily increments and in only a few sections of the nation; to recognize that their potential numbers are so awesome that the sixty-odd people-exporting nations are well supplied to pack our nation until every hideous malady of crowding has been moved from the Third to the First World; and thus to prefer to this endless temporizing with distant disfunctions the broader good of the poor in both sending and receiving societies (it is also the broader good of the non-poor), which can come only from being forced to deal now with the poor and the causes of their disadvantage directly and immediately.

Restrictionism cannot aim to end immigration. But it begins with the recognition that immigration is a solution to human problems which, though it seems to have worked for our ancestors and for us at a very different demographic and ecological time, increasingly becomes only a solution for a very few and delays the devising of solutions for the great mass of those whose lives will be spent not in physical escape but in learning to manage what they have.

Otis Graham is a Professor of American History at the University of California at Santa Barbara and a Center Associat

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Had Chicanos wanted to pursue the way of separatism and revolt, it would have been accomplished long ago through the political party of La Raza Unida. The precept and concept of La Raza Unida are well-known to most Chicanos in the United States. Yet party membership in La Raza Unida is relatively inactive, while Chicano registration in the Democratic and Republican Parties increases. To me, the implication is that Chicanos subscribe more to an American standard than to a Mexican orientation. From Mr. Graham's position, this condition may be so subtle that it escapes him.

It is true that Chicanos are very sensitive to the plight of the illegal Mexican migrant. But Chicanos nonetheless recognize the need for a secure and regulated United States-Mexico border. Chicanos are aware of the perils of a completely open border with unrestricted entry from Mexico into the United States. Chicanos know that the conditions caused by unplanned growth would be chaotic for this country and would be disastrous for the mass of Mexican workers and their families who would come to the United States without a job, a place to live, immediate means of support, and without medical care.

Chicanos want a sensible approach and solution to a social problem. What they oppose is the dogmatic preoccupation of restrictionists who would slam shut the American-Mexican border door with the flick of a racist wrist. And they reject the American arrogance toward Mexico that for too long has been our only national policy. In view of the Carter Administration's desire to share in Mexico's natural resources, it is imperative that our approach be from a position of mutual concern and respect — not one based on innuendoes. Mr. Graham's rhetorical presumption only serves to exacerbate the illegal alien issue rather than elevate it to a higher degree of public knowledge and understanding.

Vic Villalpando is the author of "The Impact of Illegal Aliens on the County of San Diego," a research paper prepared in 1977 for the San Diego County Board of Supervisors when he was community affairs officer of the county. He participated in a Center dialogue on illegal immigration ("Mexico — The Special Case," The Center Magazine, *July/August, 1977), and is now an administrator of the San Diego County Health Department.*

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Chapter 13: Immigration

Because population growth has rarely been a concern of immigration policy makers, it is especially important to study immigration from the perspective of population policy. In the years 1861 to 1910, the average annual immigration rate per 1,000 total population of the United States was 7.5; the rate for the period 1911 to 1970 dropped to 1.8. The rate for the recent period reflects a rise from the 1930's, when there was a net outflow of migrants, to the 1960's when the rate was 2.2.[1]

Historically, immigration has contributed profoundly to the growth and development of this country. In fact, we pride ourselves on being a nation of immigrants. Traditionally, because of the desire to settle advancing frontiers and the demand for labor in the expanding industries, there were few restrictions on immigration. However, a changing situation early in this century became reflected in new immigration policies. The situation is now changing again, and it is appropriate that the Commission review the role of immigration.

The Past

Our nation's history repeatedly reveals the outstanding contributions of immigrants. They provided much of the manpower and initiative that settled the colonies and opened the west. They helped build the railroads, worked in the factories, organized labor, succeeded at the highest levels of business and government, and have left an indelible mark on American arts and scholarship. Immigrants today are contributing in equally significant ways, and there is every reason to expect such benefits from immigration in the future. Our society has been shaped by the many identities of its citizens.

In response to the needs of the economically, religiously, and politically oppressed around the world and to our needs as a new and growing nation, there were no significant restrictions on immigration until after the Civil War. In 1882, Chinese immigrants were excluded. Later, other narrowly selective requirements were imposed for health and public welfare reasons. After World War I, there were strong social and political pressures to impose tight restrictions on immigration. The Immigration Act of 1924 defined special categories of immigrants (close relatives, refugees) not subject to numerical limits and set a quota of about 150,000 for all others. The legislation was based on complicated formulas to restrict immigrants from certain countries in order to retain the racial and ethnic composition of the United States population. This system was replaced by the Immigration Act of 1965.

The 1965 legislation shifted the restrictions from national origins to priorities based on family reunification, asylum for refugees, and needed skills and professions. Because of past restrictions, backlogs of demand, and the 1965 change in policy, there has been a dramatic shift in the geographic origins of our immigrants. From 1945 to 1965, 43 percent of immigrants came from Europe. But, from 1966 to 1970, only one-third of the immigrants were European, while one third were Canadian and Latin American, and the remaining third were West Indian, Asian, and African.[2] This geographic change has also affected the racial composition of immigrants, increasing the number of nonwhites. Because of earlier changes in composition, women now outnumber male immigrants, and there are more families with dependents.[3] During the sixties, the flow of aliens arriving for permanent residence averaged about 332,000 per year. There were about 100,000 more such persons entering the country in 1970 than was the case in 1960.[4] Because the 1965 changes in immigration policies are so recent, it is not entirely clear whether these adjustments will develop into long-range trends.

The Demographic Implications

Immigrants are now entering the United States at a rate of almost 400,000 per year.[5] The relative importance of immigration as a component of population growth has increased significantly as declining birthrates diminish the level of natural increase. However, the proportion of the population which is foreign-born (about five percent) is not changing much. Between 1960 and 1970, about 16 percent of the total population growth was due to net immigration (the difference between the number of people entering the country and the number leaving). However, the increasing relative significance of immigration can be misleading for, if native births and deaths were balanced, immigration would account for 100 percent of population growth.

If net immigration were to remain at about 400,000 per year and all families were to have an average of two children, then immigrants arriving between 1970 and the year 2000, plus their descendants born here, would number 15 million at the end of the century. This would account for almost a quarter of the total population increase during that period.[6]

One should ask not only how much immigration contributes to population growth, but also how seri

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Population and the American Future, the Report of the Commission on Population Growth and the American Future. Washington, 1972.

ously immigration affects the advent of population stabilization. If immigration were to continue at the rate of about 400,000 per year, a rate of 2.0 rather than 2.1 children per woman would eventually stabilize the population, though at a later date. And the size of the population would ultimately be about eight percent larger than if there were no international migration whatsoever.[7]

If the flow of residents leaving this country were as large as the flow of immigrants, they would balance each other and have no impact on the growth rate. Unfortunately, no records are kept of people permanently leaving the country; emigration statistics must rely on indirect estimates. Indications are that emigration has been increasing recently from about 23,000 in 1965 to 37,000 in 1970. The most popular destinations are Canada, Israel, and Australia, and these may possibly account for more than half the emigrants. Emigration now is probably only about one-tenth the volume of immigration, but it has been proportionately larger in other periods of history. Of course, it is possible that it may increase again in the future.

Immigration affects not only the growth of the population, but also its distribution. It is not surprising that the settlement patterns of immigrants reflect the distribution trends of the native population, since most immigrants come to this country either to join their relatives or obtain a job. In fact, immigrants tend to prefer metropolitan areas and are concentrated in a few of the largest cities. Immigrants will contribute about 23 percent of the population growth which is projected to occur within fixed metropolitan boundaries between 1970 and 2000, assuming the 2-child growth rate.[8] Not only do immigrants tend to be highly metropolitan, they are also concentrated in a few states. Two-thirds of the recent immigrants intended to settle in six states—New York, California, New Jersey, Illinois, Texas, and Massachusetts.[9]

Illegal Aliens

A major and growing problem associated with immigration is that of illegal immigrants.* It is impossible to estimate precisely how many escape detection; but, during 1971, over 420,000 deportable aliens were located. This figure is larger than the number of immigrants who entered legally during the same period. Estimates place the number of illegal aliens currently in the United States between one and two million. Most are men seeking employment. Because the number of illegal aliens apprehended has risen dramatically (from less than 71,000 in 1960 to over 400,000 in 1971), the number of aliens in illegal status has probably been increasing significantly. Also, the problem has been spreading from the southwest, along the Mexican border, to all the major metropolitan areas across the country.[10]

The economic problems exacerbated by illegal aliens are manifold and affect the labor market and social services. It is often profitable for employers to hire illegal aliens for low wages and under poor working conditions; these workers will not risk discovery of their unlawful status by complaining or organizing. Thus, illegal aliens (who usually take unskilled or low-skilled positions) not only deprive citizens and permanent resident aliens of jobs, but also depress the wage scale and working conditions in areas where they are heavily concentrated. Although many aliens enter the United States in order to work and send much of their earnings back to their families and homeland, others are not as fortunate in finding jobs and can be a drain on public welfare and social services. Because of the illegal and precarious nature of their status, these aliens are ready prey for unscrupulous lawyers, landlords, and employers.

Eight out of 10 illegal aliens found are Mexicans. Most of the others are Canadians and West Indians, although there are also sizable groups of Portuguese, Greeks, Italians, Chinese, and Filipinos. Their countries were affected by immigration policy changes in the 1965 Act, and there is considerable demand and pressure for immigrant visas. The flow of illegal immigrants could probably be reduced if the numbers of permanent residence visas were increased, the economic incentives for hiring illegal aliens were eliminated, and/or the economic advantages of obtaining a job in this country were reduced. In any case, an aggressive enforcement program must be developed along all borders and ports of entry. Any enforcement programs against illegal entry and possible laws against employment of illegal aliens must take special care not to infringe upon the civil rights of Mexicans, Mexican-Americans, and others who are legally residing here and working or seeking work.

Competition for Work

In addition to the adverse economic pressures caused by *illegal* aliens, it is possible that *legal* immigra-

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*****_A separate statement by Commissioner Alan Cranston appears on page 152._

ion could have a negative impact if not regulated arefully. It is the purpose of the labor certification rogram to ensure that immigrants do not compete with ndigenous labor, particularly in periods and geographic reas of unemployment. But, only a small percent of nmigrants are actually required to be certified. Since mmigrants often have relatively high education and kills, there is an economic incentive for employers and nstitutions to favor them. This can work to the isadvantage of the native-born, particularly members of ninority groups and women, who have traditionally een discriminated against and denied opportunities to pgrade their skills.

A flow of highly trained immigrants can mask the eed for developing and promoting domestic talents—or example, in the medical field. Although medical chools have recently been expanding enrollments, a ignificant proportion of the demand for doctors is eing met by immigrants trained abroad. It appears that, vithout the availability of these foreign doctors, the nedical schools would be under greater pressure to ncrease their enrollment and to provide more educational opportunities for all Americans—particularly ninorities and women. The fact that there are more egistered Filipino doctors (about 7,000[11]) than black doctors (about 6,000[12]) practicing in the United States hows the inequities that can arise.

If immigrants are also favored in the unskilled and emi-skilled occupations, the discrimination should be ttacked directly. Obviously, such discrimination may ave other important sources which may not be affected y immigration policy. Thus, it is important to watch ccupational trends, particularly in metropolitan areas, o ensure employment and development opportunities o racial and ethnic minorities. Traditionally, regardless f their ethnic origins, immigrants have started employment at the lowest levels and worked their way up to ain a measure of affluence. For various reasons, blacks ave not benefited equally. Special attention to career dvancement programs and promotion practices, as well s hiring, is needed to permit blacks to travel the same conomic path and have the same opportunities as mmigrants.

Recommendations

The Commission believes that it is imperative for his country to address itself, first, to the problems of ts own disadvantaged and poor. The flow of immigrants hould be closely regulated until this country can rovide adequate social and economic opportunities for all its present members, particularly those traditionally discriminated against because of race, ethnicity, or sex.

Thus, the Commission believes that an effectively implemented and flexible labor certification program is necessary to ensure that immigrants do not compete with residents for work. Immigration policies must react quickly to changes in domestic unemployment rates and in occupational and geographic shifts in the labor force. Also, national manpower planners and immigration officials ought to be aware of the more subtle form of discrimination related to immigration. A readily available source of trained professionals from other countries may slow the development of domestic talents and the expansion of training facilities. While this importation of talent may be economical for the United States, it is not fair either to the foreign countries that educate the professionals or to our own citizens—particularly those minority groups and women whose access to professional training and economic advancement has been limited.

In order for Congress and immigration officials to consider these economic problems, apply appropriate regulations, and expect the economic conflicts to be alleviated, they must also eliminate the flow of illegal immigrants. As has been shown, the economic and social problems associated with illegal immigrants have reached significant proportions.

The Commission recommends that Congress immediately consider the serious situation of illegal immigration and pass legislation which will impose civil and criminal sanctions on employers of illegal border-crossers or aliens in an immigration status in which employment is not authorized.

> *To implement this policy, the Commission recommends provision of increased and strengthened resources consistent with an effective enforcement program in appropriate agencies.*

While the elimination of illegal aliens will alleviate the acute problems associated with immigration, there is still the question of the legal immigrants and their demographic impact. The Commission recognizes the importance of the compassionate nature of our immigration policy. We believe deeply that this country should be a haven for the oppressed. It is important that we be in a flexible position to take part in international cooperative efforts to find homes for refugees in special

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10 Population and the American Future

circumstances. In addition, we should continue to welcome members of families who desire to join close relatives here. Our humanitarian responsibilities to the international community require consideration of matters beyond national demographic questions.

Because the immigration issue involves complex moral, economic, and political considerations, as well as demographic concerns, there was a division of opinion within the Commission about policies regarding the number of immigrants. Some Commissioners felt that the number of immigrants should be gradually decreased, about 10 percent a year for five years. This group was concerned with the inconsistency of planning for population stabilization for our country and at the same time accepting large numbers of immigrants each year. They were concerned that the filling of many jobs in this country each year by immigrants would have an increasingly unfavorable impact on our own disadvantaged, particularly when unemployment is substantial. Finally, they were concerned because they believe that immigration does have a considerable impact on United States population growth, thus making the stabilization objective much more difficult.

The majority felt that the present level of immigration should be maintained because of the humanitarian aspects; because of the contribution which immigrants have made and continue to make to our society; and because of the importance of the role of the United States in international migration.

The Commission recommends that immigration levels not be increased and that immigration policy be reviewed periodically to reflect demographic conditions and considerations.

> *To implement this policy, the Commission recommends that Congress require the Bureau of the Census, in coordination with the Immigration and Naturalization Service, to report biennially to the Congress on the impact of immigration on the nation's demographic situation.*

33.

INTERAGENCY TASK FORCE ON IMMIGRATION POLICY, STAFF REPORT, DEPARTMENTS OF JUSTICE, LABOR AND STATE, MARCH 1979

CHAPTER VI
ECONOMIC IMPACTS OF IMMIGRATION

The Economy

The precise impacts of immigration on the U.S. economy, or any economy for that matter, have not been thoroughly studied because of the difficulty of isolating contributions of immigration from other factors. Nevertheless, there is fairly general agreement among economists on the impacts of immigration on the U.S. economy, both past and present. This agreement is a product of deductive analysis of the way the economy reacts to the addition of an immigrant labor supply. Deductive analysis must, necessarily, be the mode for most of the discussion in this section. Actual measurements of recent economic impacts on the United States are practically nonexistent.

It should be understood that the effects of immigration depend heavily upon an economy's stage of development. There can be no doubt that Nineteenth Century immigration made immense contributions to the growth of the U.S. economy by helping to provide a labor supply, both skilled and unskilled, which complemented the country's abundance of natural resources and developing technology. At the same time immigrants helped to provide large markets for industrial products, permitting economies of scale in production and transportation. The result was not only faster economic growth, but also increases in per capita income as each immigrant added to economic output an amount which exceeded the average income of the population he or she joined. Early in this century, however, with population much larger than earlier, natural resources were relatively less abundant and most scale economies had been fully exploited. Consequently, Twentieth Century immigration, while continuing to add to gross national product, did not contribute to increases in U.S. per capita income after World War I, and possibly not even during the first two decades of the century.[1]

The discussion which follows is directed to the contemporary economy, but its time dimension for the United States is considerably larger, stretching back for half a century and forward to the foreseeable future. Impacts on the total economy and particular sectors of it will be treated separately. A separate section will then deal with the organization of labor markets.

Total Economy Impacts

At the most fundamental level of analysis, immigration represents an increase in the available quantity of one factor of production--labor--thereby enlarging the potential output of the economy.

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[1] Joseph T. Spengler, "Some Economic Aspects of Immigration to the U.S." Law and Contemporary Problems, XXI, (Spring 1956) pp. 236-255.

Dr. George Johnson, in a paper prepared for the Task Force,[2] and Dr. Barry Chiswick, in an earlier published paper,[3] both analyze the effects of immigration from the perspective of the United States as a competitive economy.[4] Both show that immigration raises national product (and income), the returns to owners of capital (profits), and *per capita* and total earnings of the skilled segment of the labor force. The average earnings (wage rates) of low-skilled indigenous workers fall,[5] however, as the increased availability of immigrants (assumed to be low-skilled) lowers the wage for low-skilled labor, and consequently, a small fraction of indigenous unskilled workers choose to drop out of the labor force. If the new immigrant labor supply is assumed to have the same skill composition as the indigenous labor force (i.e., their skills are matched) the results are the same except that the earnings of all indigenous workers fall. But the declines would be very small (and, very likely, only relative to profits rather than in absolute terms) at the relatively low U.S. levels of legal immigration since World War I. Average income per labor force member (workers and others actively seeking work) also falls in both the low skill and "matched" skill cases, because of the partially fixed nature of other factors of production.

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[2] George E. Johnson, "The Labor Market Effects of Immigration into the United States: A Summary of the Conceptual Issues," November 1978.

[3] "Immigrants and Immigration Policy," Barry R. Chiwick, Contemporary Economic Problems, American Enterprise Institute (1978).

[4] The term "competitive economy" here generally refers to competitive wages, perfect ability, perfect information and the absence of market power and discrimination. This is, of course, a theoretical state, rarely if ever attained in practice. The U.S. economy and labor markets are mixtures of competitive and noncompetitive elements.

[5] Such a "fall" in wages will likely tend not to result in money wage reductions, but rather will be reflected in a slower rate of wage increases relative to wages for skilled workers.

These initial impacts of immigration in a given period are altered as time passes. Because of the now greater return to capital, additional capital investment is undertaken and, because the skilled wage relative to the unskilled has also increased, investments in schooling and training also increase. The end result is greater increases in gross national product and smaller wage changes, for both skilled and low-skilled labor, compared to those which occur within the first few years of the immigration.

Expenditures for social capital and programs follow a reverse pattern. They are comparatively small initially because immigrants tend to be adults (with the costs of their physical and mental maturation having been borne by their native countries) and have few dependents, but ultimately their offspring will exert demands for social expenditures.

In the paper prepared for the Task Force, Dr. Johnson has developed some of these impacts quantitatively for illustrative purposes. Using hypothetical, but reasonably based, values of the economic relationships involved, and an assumption of four million unskilled immigrants[6] (recent cohorts of legal immigrants have possessed skills similar to those of U.S. workers) augmenting an initial U.S. labor force of 100 million workers[7] (20 percent low-skilled), the following impacts result: gross national product increases by about two percent; the incomes of capital owners, skilled labor, and unskilled labor, as entire groups, each increase by about two percent; but the annual wage of unskilled labor falls by fifteen percent. The latter effect results from the immigrant additions to low-skilled labor supply. Subsequently, as physical and human capital adjust to the new labor supply, the income gains of all groups increase while the low-skilled wage rises relative to that for skilled workers.

In summary, the immigration of low-skilled workers provides economic benefits for most U.S. residents. (Price effects, which cannot be definitively analyzed within this framework, most likely provide small additional benefits.) If the immigrant group matches the occupational skill of the U.S. labor force, only the owners of capital clearly gain (including households which employ domestic help), but the losses to workers will be both very small and of short duration. The clear loser in these scenarios is U.S. low-skilled labor when the immigrant group is also low-skilled.

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[7] This number is within the now commonly used range of estimates for the illegal immigrant population. But see the section of this report on illegal migration for a critical evaluation of all such estimates.

[8] The U.S. labor force was approximately 101 million in December 1978.

Several qualifications to this basic analysis must be noted:

(1) The analysis does not attempt to assess the time required for the various impacts to occur except as to differentiate between "short run adjustments in relative wages" and "long run adjustments of physical and human capital." Even in competitive labor markets the adjustments in relative wages necessary for absorption of large numbers of immigrant workers take time. During that time, there will be above normal levels of frictional[8] unemployment, the increment of which will be made up principally, but not entirely, of immigrants. If labor markets are not competitive (in other words, if wage rates cannot decrease sufficiently for surplus labor to be absorbed), this unemployment may persist.

(2) The immigration is assumed to occur when labor market balance exists, that is, when the business cycle is at an intermediate point where there are neither shortages of labor nor cyclical unemployment (many writers now characterize this state as the unemployment rate associated with nonaccelerating inflation). If, alternatively, immigration takes place near the peak of the business

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[8] Frictional unemployment is the unavoidable minimum unemployment (usually 3-4 percent of the labor force) caused by seasonality, first-job seekers, and persons temporarily between jobs.

cycle, when there are apt to be shortages of low-skilled labor, the economic benefits will be greater than in a situation of labor market balance, and a fall in the relative wages of low-skilled workers is unlikely. (This condition and these results characterized the use of "guest" workers in Western Europe until 1973. The ultimate purpose of the program was to help sustain high rates of economic growth.) Conversely, if immigration occurs near the bottom of the business cycle, when many U.S. workers are unemployed, it is unlikely to produce any significant benefits and it clearly will exacerbate unemployment or lower the relative wages of low-skilled workers or both.

(3) The analysis and numerical examples are directed to the total U.S. economy. Since immmigrants tend to concentrate in certain areas and industries, the impacts on these markets could be substantially greater than those on the total economy: greater gains by skilled workers and the owners of capital and a greater fall in the relative wage of the unskilled. This point should not be given undue weight, however, because the impacts of even concentrated immigration tend to pervade the entire economy rather quickly, through the mobility of capital and labor (both U.S. and immigrant). Estimating the duration of the disproportional effects of immigration on certain regions and industries is complicated because while in theory they will tend to pervade the economy rather quickly through the mobility of capital and labor (both U.S. and immigrant),

in practice certain regional inequalities in unemployment and wage rates have been known to persist for decades.

(4) The analysis assumes a single large immigration, when, in fact, immigration is a continual process. Thus, at any point in time immigrants are causing both the initial and subsequent impacts described here.

(5) The analysis does not encompass the impacts of the immigrant population on the consumption of resources which are relatively fixed in supply: air, space, water, and other environmental resources. These impacts are difficult to assess. Among other things, they depend upon the size and residence locations the immigrant population. They also depend upon the values that U.S. society places on the various environmental resources and these are difficult to quantify and are constantly changing. It does seem safe to say, however, that the direction of these impacts would be negative (as with any increase in population) even though their magnitude cannot be stated.

The first qualification of the basic analysis is probably the most important one in a policy context: if the relative wage of unskilled labor in the United States is not competitively determined or is otherwise downwardly rigid, that is, if it does not fall with the admission of sizeable numbers of low-skilled immigrants, increased unemployment will occur. Unemployment, in contrast to a decline in the relative wage of low-skilled workers, is visible, reasonably well measured, and costly, both to the unemployed themselves and to taxpayers generally. Policies which lead to higher unemployment are not likely to be condoned by the American public (deflationary fiscal and monetary policies may be exceptions). It then becomes important to assess carefully the likelihood of rising unemployment under various immigration policies considering the degree of competitiveness and wage rigidity of the affected sectors of the labor market.[9] That will be attempted in the following sections.

Distribution Impacts

Immigration can affect the distribution of income in a society--put simply, who gets what? As stated earlier, the largest distributional impacts occur when the immigrants are all or predominately unskilled. Then they lower the wage rates (in relative terms) of the unskilled resident workers with whom they compete while raising the average income of skilled workers and the owners of capital. The consumers of immigrant-provided goods and services also benefit. In these circumstances the economic aspect of the immigration policy requires a choice between benefits which are fairly general across our population (immigration) and those which are concentrated on our low-skilled workers (no immigration).[10] At first blush, this may seem to be an easy choice: general benefits are better than constricted ones. However, the benefits which go to each unskilled worker in the absence of immigration are likely to be much greater in size than the per capita gains for the general population which result from immigration. Furthermore, the United States has a policy commitment to aid the disadvantaged, many of whom are unskilled workers. Consequently, the choice is not easy.[11]

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[9] The reader must be mindful that there is a range of competitiveness in labor markets, but that for the lowest skilled workers, the minimum wage often restricts competitiveness. Downward wage rigidity also occurs in low-skilled markets where wages are buoyed partly by social programs which make working at particularly low wages unnecessary for those indigenous and immigrant workers eligible for social programs.

One can argue that the choice described need not be made, because the total resident population can benefit economically from immigration. But the latter is true only under fortuitous circumstances, when immigration is a response to rapid economic growth which produces labor shortages in the least skilled jobs.

If immigrants can be induced to fill all of the undesirable jobs, while all resident workers leave them them for better ones, the economy can continue to grow and the entire resident population benefits (only market-transacted economic benefits are considered here; "externalities," possible increases in polluted air, for example, are another matter). Thus, if all other necessary circumstances are already present, immigrants can, in effect, provide a labor base for the upward mobility of resident workers, as well as increasing the returns to the owners of capital.

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[10] This choice, when it is put in terms of rapid growth (immigration) versus slow growth (no immigration), is disingenuous because it disguises the fact that not everyone benefits from the economic growth produced by the immigration of low-skilled workers.

[11] In principle, the gains to the general populace could be redistributed to the low-skill workers by way of government sponsored job training and government programs of income transfers. Barry Chiswick suggests that both the tax and welfare systems can be used as the machanism for such transfers. See footnote 3.

The circumstances which produce these universally favorable effects on resident workers are rare. Some writers have said they existed in the United States during the late 19th and early 20th centuries, contending that native U.S. workers rose on the backs of the millions of immigrants of that period.[12] Some surely did, but others did not, most notably, Blacks, Mexican-Amercians, and poor rural residents, especially those living in the South. These groups would have made faster occupational gains before World War I in the absence of the massive waves of European immigrants who took unskilled jobs in the North.[13]

Similarly, the foreign worker programs of Western Europe were based on these ideal circumstances. Foreign workers took the worst jobs, enabling the host economies to sustain high levels of growth.

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[12] For a vivid description of immigrant worker roles in the 19th Century, see Oscar Handlin, The Uprooted, Little Brown and Company, Boston, 1951, Ch. 3, pp. 63-93.

[13] See Brinley Thomas, Migration and Economic Growth, Cambridge University Press, New York (2nd ed.) 1973, CH XVIII, pp. 330-346.

whether, in fact, all indigenous workers benefited from the presence of the guestworkers is a question which has not been thoroughly studied. In contrast to the United States, the host countries involved generally did not contain disadvantaged native groups with whom the guestworkers competed, so that benefits for indigenous workers may have been quite pervasive. As a general rule, however, it is not possible to bring foreign workers (or any external supply of workers) into labor markets and avoid adverse impacts on the resident workers who are already attached to those labor markets.

Unemployment

The adverse distributional impacts of immigration discussed so far are declines in the wages of unskilled resident workers relative to the wages of skilled workers (and relative to profits). An increase in the unskilled labor supply, due to immigration, causes wages for unskilled labor to fall. In this schema, unemployment does not increase because (1) the wage decline leads to an increase in the total employment of unskilled workers and (2) at the lower wage, some resident workers choose to drop out of the labor force.

As noted earlier, the conclusion that no unemployment results from immigration depends strongly on the assumption of a competitive, quick-reacting economy, where wage rates and worker behavior adapt quickly to the new conditions brought about by immigration. It must be said, however, that when many workers immigrate in a short period it is unlikely that actual labor market reactions would be rapid enough to prevent the development of some short run unemployment, unless the immigration is timed perfectly to fill developing labor shortages.

Unemployment is especially likely when a large proportion of the jobs potentially available to immigrant workers are paid at the statutory minimum wage. In this case, the wage cannot drop to absorb the new workers. Therefore, they must either seek employment in jobs not covered by the minimum wage (including jobs where the wage paid violates the minimum wage statute) or wait for job openings which develop through normal turnover in the covered sector. In either event, it will take time before all "temporary" immigration-induced "frictional" unemployment, both of immigrants and indigenous workers, is eliminated.

Unemployment of the type just described will ultimately disappear as long as some unskilled labor markets are competitive (i.e., uncovered by minimum wage). Indeed, one of the messages of economic analysis is that a competitive economy can normally absorb immigrant labor without the development of anything more than short-term unemployment. This unemployment will be more quickly absorbed in a buoyant economy than in a stagnating one, but in either case it will ultimately disappear. What is "temporary", however, is that unemployment caused by a particular cohort of immigrants--those entering the labor market at approximately the same time. If immigration is a continuous process this incremental frictional unemployment can be a permanent feature of the economy.

Immigration to noncompetitive labor markets can, however, produce more persistent unemployment. If unskilled immigrants are brought into labor markets where unskilled resident workers are paid the statutory minimum wages, so that wages cannot fall, more or less permanent unemployment will result. Some unskilled workers may be able to move into labor markets where the minimum wage does not apply. Others may be able to move to more skilled jobs. However, if these effects are limited, for example, by a very small uncovered sector and lack of trainable skills of resident workers, the unemployment will tend to persist, although it may be disguised by the tendency of "discouraged" workers to leave the labor force. (If other labor markets are tight, fiscal and monetary measures, which would eliminate this unemployment by increasing labor demand, generally cannot be undertaken because they would tend to be inflationary.) This analysis is likely to apply to current U.S. conditions brought about by the presence of illegal migrants.

Impacts of De Jure Immigration

The foregoing, partially abstract, analysis is necessary to understand the range of possible economic impacts of immigration on the current U.S. economy. Actual impacts can then be assessed by fitting facts into that framework.

The most pertinent facts about legal immigration since the Immigration Amendments of 1965 concern its level and occupational structure. Immigration since 1965 has brought less than 200,000 persons a year into the U.S. labor force, or about five to eight percent[14] of the annual increases in the labor force. Over the same period, the occupational makeup of the immigrants has been much like that of the total U.S. labor force.

From these two facts it seems highly probable that the impacts on the U.S. economy over this period have been slight because the numbers involved have been relatively small and they have been spread rather evenly over all occupations. Gross national product is, of course, somewhat higher in 1978 than it would be if there had been no immigration since 1965 (perhaps two to three percent higher), but per capita income has probably not been affected.

Distribution impacts have also been very slight, in the direction of increased returns to owners of capital and reduced average earnings of workers. Certain labor markets have been impacted by immigration over the last decade and a half (e.g., physicians, nurses, scientists, tailors, sewers, and stitchers), but they are few in number and the effects generally have been to reduce labor shortages in these occupations.

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[14] Dr. Michael Greenwood, "The Economic Consequences of Immigration for the United States: Survey of the Findings," a paper prepared for the Task Force, pp. 15-18. Greenwood contends that the twelve percent figure used by David North (Immigrants and the American Labor Market, Manpower Research Monograph No. 31, U.S. Department of Labor, 1975, p. 5) is too high for these reasons: First, it was calculated by taking the average gross (rather than net) immigrant addition to the labor force as a percentage of the average net change in the labor force; and second, it was thrown off because of the period studied -- 1969-1972; during which a recession and the Vietnam War caused the number of native workers entering the labor force to decline.

As a general conclusion, it can be said that the economic impacts on the United States of the current levels of legal immigration are not very important, either in their aggregate or distributional aspects. The same cannot be said for illegal immigration.

Impacts of De Facto Immigration

Illegal immigration, like the lawful variety, increases the size of the total economy and produces economic benefits for most residents of the United States. However, since illegal migrants are believed to be predominantly low-skilled, the wage rates and job opportunities of low-skilled resident workers are adversely affected. This summation applies to periods of labor market balance; extraordinarily tight or loose labor markets will produce different sets of impacts.

In recent times, the economic benefits from illegal immigration were greatest from 1966-1969, when unemployment in the United States was unusually low. Then illegal workers helped to relieve labor shortages. This, in turn, fostered economic growth and enabled most resident workers to improve their jobs or earnings. Only hard-to-employ workers, especially disadvantaged youth, suffered from the presence of illegal workers in the late 1960's.

By 1975, however, the national unemployment rate in the United States had more than doubled from the level of the late Sixties and many of the illegal workers were then redundant. Unemployed resident workers were available for most of the jobs held by illegals. At that time illegal immigration contributed very little, if anything, to the total economy but, on the other hand, it did increase unemployment among resident workers and added to the public costs of unemployment compensation and other social welfare programs.

The contrast between these two recent periods leads to the observation that uncontrolled illegal immigration can work against the economic interests of the country. If effective controls are to be established, they must coincide with the needs of the economy.

Displacement

The actual amount of displacement of resident workers produced by illegal immigration to the United States during the 1970's is a matter of considerable controversy. One view is that it adds significantly to the country's level of unemployment, while the opposing position is that illegal migrants only take jobs which indigenous workers don't want. The latter view is certainly not wholly correct because some, albeit a minority of illegal migrants, have been found in jobs which pay well above minimum wages. The argument that illegal migrants principally take unwanted jobs, and therefore add little to unemployment, is a more reasonable position, although not necessarily a correct one.

The amount of displacement produced by illegal migrants cannot be accurately measured, but there is reason to believe that it tends to be underestimated through casual observation.[15] First, it is often true that jobs which employ illegal migrants do pay wages which are too low to attract indigenous workers. But the very presence of the illegal workers keeps the wage rates and employment conditions for many of these jobs from rising to the point of attracting resident workers. This kind of displacement tends to be overlooked, but is, nonetheless, very real. Second, even the absence of indigenous workers from low wage labor markets may be more apparent than real. Frequently, there are resident workers who would like to take these low wage jobs, but they tend to be less able workers, often young and without work experience. Employers, given the choice, tend to prefer illegal migrants because they are more productive (not incidentally because of their fear of deportation if they are not) and, as a result, the indigenous workers are squeezed out of the market and out of sight. This phenomenon is much like that of the "unavailability" of Blacks and Hispanics for craft apprenticeship positions in the 1960's. They weren't available because they assumed, on the basis of past experience, that they had no chance of being hired as apprentices.

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[15] One reason for this is that indigenous workers are rarely fired to make room for illegal migrants. Instead, an illegal migrant will merely be hired before an indigenous worker applies, or, if thought preferable, in lieu of an indigenous applicant.

The controversy about displacement from illegal migrants will not be settled soon. A reasonable conclusion is that when U.S. unemployment is at its current level--six percent of the labor force--some of the jobs held by illegal workers do represent displacement. At the same time, it is true that some of the jobs held by illegals could be filled by lawful workers only at substantially higher wage rates (or labor costs)--wage rates which would bring about the disappearance of some fraction of these jobs. Immigration policy must necessarily be made in the context of this ambiguity.

Future Impacts

In a paper prepared for the Task Force, Dr. Michael Wachter projects U.S. labor supply to 1985 and compares his result with labor demand, given a continuation of the current age-sex-occupation structure of that demand.[16] Wachter finds, as have other researchers, that labor markets which now employ young low-skilled males are likely to be faced with shortages of workers by the middle of the next decade, assuming, of course, the present structure of labor demand. This outcome results from the changing age structure of the population, most proximately, the low birth rates of the 1960's, and rising levels of schooling among labor force participants.

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[16] Michael L. Wachter, "Labor Market Projections and Immigration." This paper incorporates the continued presence of illegal workers at the present fraction of employment.

The question which this labor market contingency poses is whether immigration policy should be adapted to compensate for this likely shortage of low-skilled workers. This could be accomplished through increased levels of permanent immigration, a "temporary" worker program, or more relaxed enforcement of our existing immigration laws to permit a greater flow of illegal migrants. (Although there would be substantial differences in the consequences, economic and other, of these three alternatives, those differences will be ignored here in favor of the common element that all three would produce increased availability of young males to low-skilled labor markets in the United States.) This question goes directly to what is likely to be the most important short-run economic consideration bearing on U.S. immigration policy during the 1980's.

The short-run consequences of the two general alternatives can be sketched briefly. If the labor market prognostications for the mid-1980's are correct (those for labor supply almost certainly are) and an immigrant worker program is not adopted, a restructuring of relative wages can be expected. In order to attract and retain workers, wage rates for low-skilled jobs would rise relative to those for skilled jobs. Improvements in working conditions, including job security, would also occur for low-skilled jobs. The unemployment of persons dependent upon low-skilled work would also decline. The major beneficiaries of these changes would be young male workers and minority males generally, because of their numerical prominence in these markets.

Higher wages for low-skilled employment would produce consequences. Labor saving technical changes would increase. Some firms would be unable to adapt to higher wages for low-skilled workers, either through production efficiencies or raising prices and would, therefore, close down. Certain labor services purchased directly by consumers would become more costly and might all but disappear. Some product prices would certainly rise, but with proper monetary policy others would fall.

Aggregate economic growth would slow slightly with a non-immigration policy. Growth in per capita income would probably not be significantly affected, however.

These would be some of the consequences of the predicted unskilled labor shortage of the mid-1980's, if an immigrant labor recruitment program is not adopted. If use of illegal migrant workers were also eliminated, the consequences would be much the same, but their magnitudes would increase.

Increased use of immigrant labor, on the other hand, would tend to maintain the status quo in the labor markets, assuming that the numbers and timing of this utilization were appropriate for the replacement of shortfalls in U.S. resident unskilled labor supply. Improvements in the relative wages and job opportunities of the low-skilled would not occur, but neither would the business and labor service dislocations. Adjustments of relative prices would also not be necessary.

It is easy to see from these scenarios why industrialized nations generally choose to use foreign labor when faced with labor shortages and why the United States may well be sorely tempted to make the same choice in the 1980's. The major costs of using immigrant labor are longer term and uncertain (i.e., may be diminished by intervening external forces). Moreover, they fall on low-skilled workers who tend to be weakly organized and ineffective in the political process. The benefits, on the other hand, are short-term and more certain and go generally to consumers and particularly to interest groups such as employers which are more effective politically. Even some low-skilled workers who would benefit from distributional changes caused by restricting immigration may opt for the more familiar pattern of upward job mobility in a rapidly growing, immigrant-aided economy, rather than put their hopes on improvements in the relative wages and working conditions of current jobs.

Put in another way, it is unlikely that the United States will go through the economic adjustments which would be necessary to deal with the changed labor supply of the 1980's entirely from within--without reliance on some form of foreign labor. Those adjustments would be painful for many and, consequently, are likely to be avoided. Compensation to those disadvantaged by a choice either to tolerate or sanction present levels of illegal migration of workers or to raise the ceilings for legal immigrants might be attempted in the form of various social welfare programs for low-skilled workers. (Whether this would be effective or just compensation is beyond the scope of this report.)

34.

REFUGEE GOALS: REFUGEE ACT OF 1980

[The following excerpts from the legislative reports of the Senate and House Judiciary Committees on The Refugee Act of 1980 not only provide an excellent summary of the goals of the new legislation, but also of the legislative history behind the new Act. They reflect the basic refugee goals of American immigration policy in recent years.]

Calendar No. 271

96TH CONGRESS } SENATE { REPORT
1st Session } { No. 96–256

THE REFUGEE ACT OF 1979

JULY 23 (legislative day, June 21), 1979.—Ordered to be printed

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Mr. KENNEDY, from the Committee on the Judiciary
submitted the following

REPORT

[To accompany S. 643]

The Committee on the Judiciary, to which was referred the bill (S. 643), to amend the Immigration and Nationality Act to revise the procedures for the admission of refugees, to amend the Migration and Refugee Assistance Act of 1962 to establish a more uniform basis for the provision of assistance to refugees, and for other purposes, reports favorably thereon, with amendments, and recommends that the bill as amended do pass.

PURPOSE OF THE BILL

The Refugee Act of 1979 establishes for the first time a comprehensive United States refugee resettlement and assistance policy. It reflects one of the oldest themes in America's history—welcoming homeless refugees to our shores. It gives statutory meaning to our national commitment to human rights and humanitarian concerns, not reflected in the Immigration and Nationality Act of 1952, as amended. And it places into law what we do for refugees now by custom, and on an *ad hoc* basis, through the use of the "parole authority" in Section 212(d)(5) of the Immigration and Nationality Act.

The bill accomplishes five basic objectives:

First, it repeals the current immigration law's discriminatory treatment of refugees by providing a new definition of a refugee that recognizes the plight of homeless people all over the world, and by according refugee admissions the same immigration status given all other immigrants.

Second, it raises the annual limitation on regular refugee admissions from 17,400 to 50,000. This is accomplished without really increasing overall annual immigration to the United States in recent years, since the parole authority has been used repeatedly to exceed the 17,400 limit.

Third, the bill provides an orderely but flexible procedure for meeting emergency refugee situations and any other situations of special concern to the United States, if the resettlement needs of the homeless people involved cannot be met within the regular 50,000 ceiling.

Fourth, it provides for the first time the statutory requirement that Congress be consulted before refugees are admitted, and defines and exerts congressional control over the process.

Fifth, it provides for federal support of the refugee resettlement process—and extends coverage to all refugees entering the United States for two years for cash and medical benefits, and longer for other programs that help the refugees normalize their lives in their adopted communities.

BACKGROUND

Reform of our Nation's immigration laws relating to the admission and treatment of refugees is one of the important unresolved issues left from the major reforms achieved in the 1965 Amendments. The current bill (S. 643), is a product of a consensus that has developed since then as to what our country should do in facilitating the admission and resettlement of refugees.

The immediate impetus behind the drafting of S. 643 was the action in 1977–78 of the Chairman of the Committee's former Subcommittee on Refugees, (Mr. Kennedy), requesting Executive Branch comment on previous refugee proposals. In letters sent on September 11, 1978 to Secretary of State Cyrus Vance, to Associate Attorney General Michael Egan, to Secretary of Health, Education, and Welfare Joseph Califano, and to the Chairman of the American Council of Voluntary Agencies' Committee on Migration and Refugees, Senator Kennedy wrote:

> * * * I believe there is an urgent need for the United States to begin to take the steps necessary to establish a long range refugee policy—a policy which will treat all refugees fairly and assist all refugees equally. Such a national refugee policy is now clearly lacking, and there is too little coordination between the various branches of Government involved with refugee programs, and with the voluntary resettlement agenices.
>
> Given the Senate calendar, there probably will not be the opportunity to act this year on S. 2751, [95th Congress], or on refugee legislation generally. However, it is my firm intention early in the next session of Congress to pursue in an orderly and thoughtful way the growing problems our country faces in meeting the resettlement needs of refugees around the world. With this goal in mind, I would like to begin now to work with you and others in the Executive Branch to shape proposals that will help lay the basis for early legislative action on a national refugee policy.

> The refugees of tomorrow, like the refugees of today, will continue to look to the United States for safe haven and resettlement opportunities—and our Government will continue to be called upon to help. Yet all agree that present law and practice is inadequate, and that the piecemeal approach of our Government in reacting to individual refugee crises as they occur is no longer tolerable. We must learn from our recent experience with the Indochinese refugee program, and explore new methods for meeting the growing demands for refugee resettlement in the United States.
>
> I believe the provisions of my bill, S. 2751, go a long way in helping to establish a national policy of welcome to refugees. However, this basic reform of the immigration law deals with only half the problem—the admission of refugees to the United States. We must also consider the problems involved in their resettlement in communities across our land, and what the Federal responsibility is to help in that resettlement process.

Subsequently, intensive consultations began between November 1978 and February 1979 with the relevant Congressional Committee staff and officials in the Executive Branch, in an effort to draft refugee legislation that would reflect a consensus view of what needed to be done. On March 9, 1979, S. 643 was introduced in the Senate, and a companion bill (H.R. 2816) in the House, at the joint request of the Secretary of State, the Attorney General, and the Secretary of Health, Education, and Welfare.

A hearing on the bill was held on March 14, 1979 to receive testimony from the Administration, represented by Ambassador Dick Clark, newly appointed United States Coordinator for Refugee Affairs, from the American Council of Voluntary Agencies, from State and local public agencies, from the National Coalition for Refugee Resettlement, and from interested public groups. At the request of the ranking minority member of the Committee, the hearing record was held open for a month to solicit additional views and recommendations on this important legislative reform.

COMMITTEE ACTION

On July 10, 1979, the Committee met in open session, considered and amended the bill, and agreed unanimously to report the bill favorably, as amended.

General Provisions and Committee Amendments

PURPOSE OF BILL

Title I sets forth the purpose of the bill, which is to provide a permament and systematic procedure for the admission to this country of refugees of special concern to the United States, and to provide comprehensive and uniform provisions for assistance to those refugees who are admitted.

The need for such a permanent and systematic procedure was clearly set forth during the Committee's hearing on the bill by Ambassador Dick Clark:

> Until now, we have carried out our refugee programs through what is essentially a patchwork of different programs that evolved in response to specific crises. The resulting legislative framework is inadequate to cope with the refugee problem we face today. It was originally designed to deal with people fleeing Communist regimes in Eastern Europe or repressive governments in the Middle East in the immediate post-war period and the early cold war years. This framework still assumes that most refugees admitted to the United States come from these two geographic areas, or from Communist-dominated countries.
>
> The current law assumes that refugee problems are extraordinary occurrences. It provides for only a very limited number of refugees to enter the United States each year, on a conditional basis. But it also recognizes the Attorney General's power to parole additional individuals into the United States in case of unusually urgent humanitarian circumstances.

It was with these concerns in mind that the Committee acted on this bill, as outlined below.

NEW REFUGEE DEFINITION

The bill provides a new statutory definition of a refugee which will be added to the Immigration and Nationality Act. This definition eliminates the geographical and ideological restrictions now applicable to conditional entrant refugees under section 203(a)(7) of the Immigration and Nationality Act. Also, the new definition will bring United States law into conformity with our international treaty obligations under the United Nations Protocol Relating to the Status of Refugees which the United States ratified in November 1968, and the United Nations Convention Relating to the Status of Refugees which is incorporated by reference into United States law through the Protocol.

The new definition has been amended by the Committee to include "displaced persons" who are not technically covered by the United Nations Convention—to insure maximum flexibility in responding to the needs of the homeless who are of concern to the United States. This flexibility is needed, for example, to handle such situations as the evacuation of Saigon. The Vietnamese evacuated in 1975 were internally displaced persons and evacuees, and would not be covered by the U.N. definition originally in the bill.

The Committee also believes that the addition of the phrase referring to a "displaced person" as a person "uprooted because of arbitrary detention" and "unable to return to his usual place of abode" will accommodate political prisoners and detainees who need resettlement opportunities outside their country.

PROVISIONS FOR ADMITTING REFUGEES

The central feature of S. 643 is the establishment of statutory provisions for the admission of refugees during "normal flow" periods and during emergency situations. Sections 207 through 210 of the bill also write into the Immigration and Nationality Act the role of Congress in the admission process—ending the years of ad hoc use of the parole authority, which has been implemented by custom rather than clearly defined by law.

Section 207 provides for a normal flow of refugees, not to exceed 50,000 each year, except as provided to meet emergency situations that can be foreseen before the beginning of the fiscal year, and for which prior planning can be undertaken. The admission numbers will be allocated to groups of refugees "of special concern to the United States," as determined by the President in consultation with Congress, as defined below.

The President may admit more than the annual normal flow of refugees if, after consultation with the Committees on the Judiciary, he believes such is justified by urgent humanitarian concerns or is otherwise in the national interest.

For example, if the bill were law today, the President would have determined, as he has, that the national interest calls for the admission of more than 50,000 refugees of special concern to the United States in FY 1980. In the President's budget for FY 1980, as already submitted to the Foreign Relations Committee and Appropriations Committee, has has determined that some 120,000 refugees will need resettlement opportunities in the United States next fiscal year. However, if the pending bill were law, he would have previously "consulted" with the Judiciary Committees before determining the number of refugees to be admitted. If circumstances were then to change after submission of his budget request but before the beginning of the fiscal year, the President could conduct additional consultations regarding possible adjustments of estimated normal flow numbers. To facilitate such adjustments, the formal Presidential determination, based upon the results of all consultations, would not likely be issued until shortly before the beginning of the fiscal year.

The 50,000 annual numbers under the bill will be obtained by reallocating to refugees 20,000 numbers from the worldwide limitation of 290,000. (17,400 of these numbers of currently allocated to conditional entrants under section 203(a)(7), which the bill eliminates.) In addition, 30,000 numbers will be added over and above the current worldwide limitation. As a result, total immigration subject to numerical limitation will be 320,000 annually, except in those years when refugee admissions are increased by Presidential determination, after consultation with Congress.

This number, however, does not really increase our annual immigration flow, since by use of the parole authority over the past several decades the United States has accepted, on an average, some 40,000 refugees each year. Tables I and II present a summary of refugee parole actions and conditional entry numbers that document this fact.

TABLE I.—HISTORICAL SUMMARY OF REFUGEE PAROLE ACTION

Year	Country and class of people	Total
1956	Orphans from Eastern European countries	925
1956–57	Refugees from Hungary	38,045
1960–65	Refugee escapees from Eastern European countries	19,754
1962	Chinese refugees from Hong Kong and Macao	14,741
1962 through May 31, 1979	Refugees from Cuba	692,219
1973 through May 31, 1979	Refugees from the Soviet Union	35,758
1975 through May 31, 1979	Indochinese refugees	208,200
1975–77	Chilean detainees	1,310
1975–77	Chilean refugees from Peru	112
1976–77	Latin American refugees (Chileans, Bolivians, and Uruguayans)	343
1978–79	Lebanese refugees	[1] 1,000
1979	Cuban prisoners and families	[1] 15,000
Total		1,027,407
Average per year		44,670

[1] Authorized.

Table II.—Conditional entries of refugees under section 203(a)(7)

1965–66	3,191
1967–68	13,267
1969–70	30,339
1971–72	20,894
1973–74	10,099
1975–76	17,778
1977–78	20,720
Total	126,288
Average per year	9,020

REFUGEES OF "SPECIAL CONCERN"

The bill does not, and cannot, explicitly define what refugees are deemed to be "of special concern to the United States." This is an issue only the future can define. The bill, when enacted, is designed for the decades to come, and what refugees will be deemed of special concern to the American people will be a public policy issue that will be, as it is now, debated and reviewed continuously by Congress, the President, and the American people.

However, the past can, and will, serve as a guide as to what refugees have been of concern to the United States. Traditionally, the American people have responded generously to the individual needs of all homeless refugees wherever they have been found. But group refugee admissions have generally been concerned with classes of refugees from countries where, for example, the United States has had strong historic or cultural ties, or where we have been directly involved or have had treaty obligations. We have also admitted refugees to promote family reunion; to respond to human rights concerns embodied in the Universal Declaration for Human Rights; to fulfill foreign policy interests; and, when no other country has responded to the needs of the homeless, we have opened our door.

In recent years, the principal source countries for group admissions of refugees to the United States have been from Cuba, the Soviet Union, Eastern Europe, Indochina, as well as some from the Middle East, Uganda, Lebanon, Latin America and elsewhere.

CONSULTATION PROCESS

In considering the bill, the Committee was concerned that the role of Congress should be explicitly stated in the decision-making process governing the admission of refugees. As amended by the Committee, the bill specifically defines the "consultation process" and codifies what is currently an informal, customary process. The bill establishes what "consultation" with Congress means, thereby exerting Congressional control over each group of refugees admitted to the United States.

Specifically, Section 307 (a) (2) provides that "consultation" means "personal contact by designated representatives of the President with members of the Committees on the Judiciary to review the refugee situation or emergency refugee situation, to project the extent of possible United States participation . . . to discuss the reason for believing that the proposed admission of refugees is in the national interest," and to provide detailed information no:

(*a*) description of the refugee situation;

(*b*) a description of the refugees who may be admitted, plans for their resettlement, estimated cost of their resettlement, analysis of their resettleability, and an analysis of conditions within the countries from which they originated;

(*c*) an analysis of the anticipated social, economic, and demographic impact to the United States;

(*d*) a description of the extent to which other countries will admit and assist in the resettlement of such refugees;

(*e*) an analysis of the impact of the United States' participation in the resettlement of such refugees on U.S. foreign policy interests; and

(*f*) such additional information as may be appropriate.

No time frame is specified in the bill for the consultation process, but the Committee would expect that it would be undertaken expeditiously. Given the unpredictable nature of refugee emergencies and the likely prospects for unforeseen refugee situations of concern to the United States, it is almost certain that the emergency provisions of the bill (Section 208) will be invoked by the President in the years to come. In such emergency circumstances it is the view of the Committee that the consultation process, as outlined above, should be viewed as urgent by both the Executive and Legislative Branches. While it is not advisable to place a statutory time limit on the consultation process, no longer than 15 to 30 days should elapse to fulfill the consultation requirements of section 208.

The bill also does not attempt to write a statutory definition of what action is required of the Judiciary Committee of Congress to conclude the consultation process. That is a matter properly defined at the time by each Committee.

ADMISSION PROCEDURES

Normal flow refugees admitted under the bill will be admitted as lawful permanent residents, rather than under the current two-year conditional entry requirements. This ends the discriminatory practice of not granting to refugees what we grant to all other immigrants that we anticipate will come to the United States in any given year. All persons accepted for immigration purposes will be treated equally, and granted permanent resident status. Like other immigrants, refugees can be admitted with a visa or other immigrant document prescribed under regulations established by the Attorney General.

This provision of the bill was strongly supported by the voluntary agencies who have carried the principal burden of helping refugees resettle in the United States over the past three decades. The following exchange at the Committee hearing illustrates the benefits of granting refugees permanent resident status:

> Senator KENNEDY. What about giving refugees a visa? I would be interested in what you have heard from some of those who have been coming to this country.
>
> Should we allow the Department of State's consular service to have a primary role, rather than just the Immigration Service? It seems to me that conditioned entry status is considerable impediment to full resettlement and I would think not an inconsiderable expense.
>
> I am just wondering what your experience is—since you are the people who have worked directly with these refugees. Do you think we can try and accelerate the process with adequate protections against those who might not meet the criteria? Would you be wise to try and consider that as a possibility?
>
> Ms. WALTERS.[1] The voluntary agencies feel that coming in with the immigrant visas would be of great benefit to the refugees. It is always difficult to secure employment for the refugee whose paper indicates that he is here on parole, or as a conditional entrant because this indicates that he is not here permanently. Many employers are reluctant to employ them.
>
> If they could get papers as permanent resident aliens, this will improve their situation considerably.
>
> Mr. MALES.[2] I would agree that right now if you are going to issue an immigrant visa, I assume that this would be handled by consular offices, which I highly recommend, as Ms. Walter has pointed out. It greatly helps the adjustment of these refugees, if they can come in with immigrant visas. You mentioned licenses. For instance, in New York State, a person cannot buy a taxicab unless he is a permanent resident.
>
> In New York State, if a man wants to open a grocery store and sell beer, he cannot do that; because under the licensing authority of New York State, he must be a permanent resident and show he has filed for a declaration of intention.
>
> So bringing a refugee in on an immigrant visa would be a distinct advantage to the refugees in terms of their adjustment in the United States. As far as processing abroad, I don't know what the committee contemplates whether they are going to be issued by the consular offices or by the Immigration Service.

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[1] Ms. Ingrid Walter is Chairman of the American Council of Voluntary Agencies' Committee on Migration and Refugee Affairs, and Director of the Lutheran Immigration and Refugee Service.

[2] Mr. William Males represented HIAS (Hebrew Immigrant Aid Society).

In admitting refugees under the "normal flow" provisions of Section 207, it would be the view of the Committee that both consular officers in United States Embassies overseas, as well as officers with the Immigration and Naturalization Service, should be authorized to process refugees.

Under the provisions of the bill, applicants for refugee admission would be required to establish that they meet the refugee definition, that they have not become firmly resettled in any foreign country, and that they are admissible as immigrants under the Act except for certain requirements of section 212(a) of the Immigration and Nationality Act, which are waived.

ASYLUM PROVISIONS

As amended by the Committee, the bill establishes an asylum provision in the Immigration and Nationality Act for the first time by improving and clarifying the procedures for determining asylum claims filed by aliens who are physically present in the United States. The substantive standard is not changed; asylum will continue to be granted only to those who qualify under the terms of the United Nations Protocol Relating to the Status of Refugees, to which the United States acceded in November 1969.

The bill requires the Attorney General to establish a uniform procedure for passing upon an asylum application. The Committee believes such a uniform procedure should include a provision allowing all asylum applicants an opportunity to have their claims considered outside a deportation and/or exclusion proceeding, provided the order to show cause has not been issued.

The bill also provides that persons granted asylum shall be placed into a conditional admission status equivalent in most respects to that provided under current law to refugees admitted under present section 203(a)(7) or under this bill's proposed section 208. Under current practice, there is no single status uniformly given people granted asylum under the terms of the U.N. Protocol. Some are granted individual parole, and some are given "indefinite voluntary departure." This practice has often left the refugee in uncertainty as to his own situation and has sometimes made it more difficult for him to secure employment and enjoy the other rights to which he is entitled under The Protocol. The Committee expects that those difficulties will cease under this provision. The bill also makes it clear that the Attorney General may terminate the conditional admission status if conditions change in the individual's home country so that he would no longer be subject to persecution upon return.

The bill allows the use of up to 5,000 numbers a year for adjustment of status of a refugee granted asylum to that of lawful permanent resident. Adjustment cannot take place until the refugee has been in this country for two years, and the refugee must make application for adjustment. If conditions have changed in the refugee's home country so that he would no longer be subject to persecution upon return, adjustment would not be available. Spouses and children of refugees granted asylum are eligible for adjustment on the same terms.

EMERGENCY ADMISSION PROCEDURES

For the first time, the bill provides procedures governing the admission of refugees in unforeseen emergency situations. If the President determines, following consultations with the Judiciary Committees, that an emergency refugee situation exists—that the admission of refugees in response to such an emergency is justified by grave humanitarian concerns or is otherwise in the national interest—he may fix a number of refugees to be admitted. Allocation of those admissions will be in accordance with a Presidential determination, after consultation with Congress.

Thereafter, the Attorney General will admit to the United States emergency situation refugees who establish that they meet the refugee definition and that they are not firmly resettled in any foreign country. The Attorney General may admit them as conditional entrants or as permanent resident aliens, according to regulations and procedures he may prescribe for dealing with emergency refugee situations. If adequate screening is impossible under the circumstances, he may admit refugees conditionally; if he is satisfied that time and circumstances permit adequate screening, he should admit refugees as permanent resident aliens.

For the purposes of the bill, the Committee believes that "emergency" should be defined in accordance with the simple dictionary definition of the term: "an unforeseen combination of circumstances or the resulting state that calls for immediate action." An unforeseen emergency refugee situation could result from many causes which, of course, no bill can foresee. But they might include: a sudden exodus of people from a country where there had been no refugee flow before (such as Iran today); or it could come from a substantial increase in the number of refugees in an area of the world where "normal flow" refugees were anticipated, but urgent new numbers developed, such as Indochina today; or any catastrophic circumstance affecting an asylum area requiring immediate action.

ADJUSTMENT OF STATUS PROVISIONS

For those refugees who may have been admitted under Section 208 as conditional entrants, Section 210(a) provides lawful permanent resident status for any refugee who has been physically present in the United States at least two years, who has not otherwise acquired lawful permanent resident status, and whose conditional entry has not been terminated by the Attorney General.

DOMESTIC RESETTLEMENT ASSISTANCE

Because refugees admitted to the United States are a result of a national policy decision and by federal action, the federal government clearly has a responsibility to assist States and local communities in resettling the refugees—assisting them until they are self-supporting and contributing members of their adopted communities.

Title III of the bill provides this assistance. It amends the Migration and Refugee Assistance Act of 1962, which has been the underlying source of authority for the Cuban and Indochinese refugee programs. The bill expands these programs to cover all refugees admitted to the United States, and builds upon the experience and lessons learned from the Cuban and Indochinese programs.

The provisions of Title III essentially carry forward and expand the current domestic resettlement programs authorized under the Indochina Refugee Assistance Program. This program primarily provides qualified refugees with cash assistance under a modified Aid to Families with Dependent Children Program, for which the sole qualifications are income level and willingness to accept a suitable job or training, if offered. Secondly, it provides medical assistance according to each State's Medicaid Program and finally, it provides Social Services of the title XX type of the Social Security Act according to the plan approved for each State by the federal government. These services vary from State to State and include such services as: day care, hygiene, family planning, cultural counseling, home management, transportation, housing improvement, ethnic skills, protective service for adults, life skills, vocation services and training, English as a second language training, job referral, nutrition, driver's education.

These three types of aid noted above are provided through a 100 percent reimbursement to the States for all refugees who do not qualify for the regular AFDC-Medicaid Programs. For those who do qualify for the regular programs, the funds cover the State's portion of payment for these services.

The specific domestic assistance programs authorized in Title III include:

> Payments to public or to private voluntary agencies with respect to their work in connection with the placement, resettlement, and care of refugees;
>
> Funding authority for projects to aid refugees in securing employment and other short-term projects to increase their self-reliance—English as a second language, vocational training, refresher training for professionals, services to assist refugees in attaining recertification within the United States, and other such employment and social services;
>
> Support for special educational services, including particularly training in English, and other educational services, through the elementary and secondary education system;
>
> Funds for child welfare services for two years after the arrival of the refugee child, or, in the case of a child who enters the United States unaccompanied by a parent or other close relative, until the child reaches age 18 (or whatever higher age may be specified in the State's child welfare services plan);
>
> Funding for cash and medical and other assistance during the first two years following the refugee's arrival in the United States. If the refugee's family were eligible for assistance under the State's program of Aid to Families with Dependent Children (part A of title IV of the Social Security Act) or for medical assistance under the State's Medicaid program (title XIX of the Social Security Act), funds under this authority would only be used for the non-Federal share of those programs. Funds could also be used to provide assistance to refugees, when and

if appropriate, through the Unemployment Insurance program of the Department of Labor.

The bill limits the 100 percent federal support of medical, cash, and employment programs to the first two years after the refugee's entry into the United States. This is intended to eliminate the risk of another open-ended refugee program, such as the 1965 Cuban refugee program—which continues today.

However, the Committee is mindful of the concern of many—especially State government agencies—that not all refugees will be self-supporting in two years. This concern over the need for continued federal support was raised by Mr. Simpson during the Committee's hearing:

> Senator SIMPSON. The final concern I have has to do with the issue of the withdrawal of the Federal Government from the system after 2 years and the States' bearing the full financial burden. We hear that in our travels at the State level. People of the States are very frustrated at the Federal Government beginning a program, whatever it may be, with the States in full participation and then suddenly withdrawing and saying, "Here you are." What response have you had from the State governments, Governors, mayors, and municipality officials with regard to that issue?
>
> Mr. CLARK. Fortunately, there is a State organization that is going to be testifying following us. I suspect that they could speak with more authority on this than I can. It is my understanding that there is some feeling among the State organizations representing State governments that these programs should be extended beyond 2 years. I must say, as I did earlier, that one can make a justification for extension because the burden does not suddenly end at the end of 2 years. It was our feeling that, given the overwhelming budgetary pressures of the Government at this time, that was a reasonable point to stop. But one certainly could make an argument on the other side.

In order to respond to residual needs among many refugees—which has been expressed strongly to the Committee by many State and local agencies—the Committee has amended the bill to place no time limitation upon the other assistance programs authorized by Title III, (except the 100% reimbursement for cash and medical assistance).

The bill has also been amended to continue the "special project" funds currently authorized in the Indochina Migration and Refugee Assistance Act of 1975, to provide up to $40 million annually "for special projects and programs, administered primarily by private, non-profit agencies participating in refugee resettlement programs, or by State or local public agencies, to assist refugees in resettling and in gaining skills and education necessary to become self-reliant."

No time limitation is placed upon the use of these special project funds. Together with the other funds authorized in Title III, the Committee believes adequate federal support should be available to help all local communities integrate and assist refugees resettling in the United States.

During the Committee's consideration of the bill, the Committee acted favorably upon a motion by Mr. MATHIAS to amend the bill by adding a new section requiring ongoing research and evaluation of the refugee resettlement programs authorized under Title III, in order to ensure that they maintain a high efficiency level from both a fiscal and managerial standpoint. First, the Comptroller General is required to undertake regular studies of the resettlement program, and report periodically to the Congress on his findings and recommendations, especially relating to fiscal management and control.

Second, the Committee also recognizes that there is a need to better understand the resettlement of refugees from a cultural, social linguistic, and psychological standpoint, in order to ensure adequacy and appropriateness of the programs authorized under Title III. The Secretary of HEW is thus directed to conduct or assist in the conduct of research into the resettlement process and adaptation to life in the United States. These reports should be printed and made available to Congress and the public within a reasonable amount of time so that they may be used to educate and inform those involved in policymaking and implementation of resettlement programs. As is possible, these studies should be conducted by or with individuals who possess a knowledge of the native language and culture of the subject group(s) under study. In order to facilitate the conduct of such studies, the Committee expects that the Secretary will ensure that there is a coordinated effort throughout HEW to provide research support through all sources of funding that may be available, and by way of all agencies which are authorized to provide such.

96TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 96–608

THE REFUGEE ACT OF 1979

NOVEMBER 9, 1979.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Ms. HOLTZMAN, from the Committee on the Judiciary, submitted the following

REPORT

together with

ADDITIONAL, SEPARATE, AND MINORITY VIEWS

[To accompany H.R. 2816]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2816) to amend the Immigration and Nationality Act to revise the procedures for the admission of refugees, to amend the Migration and Refugee Assistance Act of 1962 to establish a more uniform basis for the provision of assistance to refugees, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment strikes out all after the enacting clause of the bill and inserts a new text which appears in italic type in the reported bill.

PURPOSE

The purpose of the bill is to establish a coherent and comprehensive U.S. refugee policy. This objective is accomplished by creating a systematic and flexible procedure for the admission and resettlement of refugees.

Specifically, the bill amends the definition of refugee to eliminate current discrimination on the basis of outmoded geographical and ideological considerations. It separates the admission of refugees from that of immigrants under the preference system, and authorizes the annual admission of up to 50,000 refugees a year. It also authorizes the admission of more than the 50,000 normal flow of refugees in situations where it is foreseen prior to the beginning of the fiscal year that humanitarian concerns justify additional numbers and when unforeseen emergencies arise after the beginning of the fiscal year. Procedures for consultation with Congress on numbers and allocations of refugees in these situations are carefully delineated. Finally, the bill includes comprehensive and uniform provisions for Federal support of refugee resettlement and absorption, to be administered by a newly-created Office of Refugee Resettlement within the Department of Health, Education, and Welfare.

BACKGROUND

In opening the hearings on the Refugee Act of 1979, Congresswoman Elizabeth Holtzman, Chairwoman of the Subcommittee on Immigration, Refugees, and International Law stated:

> In good measure, our country's humanitarian tradition of extending a welcome to the world's homeless has been accomplished in spite of, not because of, our laws relating to refugees. (Hearings on Refugee Act of 1979, page 1; hereafter cited as "Hearings".)

Since World War II, provision has been made for the admission of refugees into the United States under a series of ad hoc legislative and administrative authorizations. Even today, 14 years after the development of a permanent statutory provision for the admission of refugees, the majority of refugees continue to be admitted outside the regular procedure established by statute.

In order to better understand the urgent need for remedial refugee legislation, it is useful briefly to review the history of U.S. refugee laws.

The first significant statute for refugee admissions, the Displaced Persons Act of 1948 (act of June 25, 1948; 62 Stat. 1009), was enacted primarily in response to the plight of the one million natives of Eastern Europe displaced by World War II who refused to return to their countries of origin because of fear of persecution by newly-formed communist governments. As originally enacted, the legislation was highly restrictive in its qualifications for eligibility, but the limits were somewhat modified by subsequent amendments to the act in 1950 and 1951. (Act of June 16, 1950, 64 Stat. 219; act of June 28, 1951, 65 Stat. 96.) The numbers of displaced persons entering under this legislation were charged against the national immigration quotas for their country of origin and if these quotas were oversubscribed, the country's quota was "mortgaged" into the future. During the three and a half year life of this program over 390,000 refugees were admitted to the United States.

Not long after the expiration of the Displaced Persons Act, another major refugee admission statute was enacted. The Refugee Relief Act of 1953 (act of August 7, 1953; 67 Stat. 400) was aimed at the expeditious admission into the United States of refugees escaping from behind the Iron Curtain. The 209,000 visas were made available for specific categories of refugees, outside of those available under the national origin quotas of the 1952 immigration law. The Refugee Relief Act was in effect from August 7, 1953 until December 31, 1956. During this period, approximately 189,000 refugees were either admitted or adjusted their status to immigrants under the act.

The so-called Refugee-Escapee Act of 1957 (act of September 11, 1957; 71 Stat. 639) authorized the issuance of 18,656 visas that had remained available at the expiration of the Refugee Relief Act. Included among those who were eligible for these visas were "refugee-escapees," defined as victims of racial, religious or political persecution who were from communist or communist-dominated or occupied countries or a country in the area of the Middle East. This was the origin of the definition of "refugee" which exists under current law in section 203(a)(7) of the Immigration and Nationality Act.

When Soviet troops marched into Hungary in October 1956, more than 200,000 Hungarians fled into Austria. In late November, President Eisenhower announced that the United States would offer asylum to a total of 21,500 Hungarian refugees. Of this number, 6,500 were to receive visas under the expiring Refugee Relief Act while, lacking any other alternative, the remaining numbers would be admitted under the parole authority of the Attorney General.

The power to "parole" aliens into the United States is granted to the Attorney General by section 212(d)(5) of the Immigration and Nationality Act of 1952 which reads as follows:

> The Attorney General may in his discretion parole into the United States temporarily under such conditions as he may prescribe for emergent reasons or for reasons deemed strictly in the public interest any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Attorney General, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.

At the time of its enactment, Congress intended that the parole provision would be used for the temporary admission of otherwise inadmissible individual aliens. The practice of using the parole provision for the admission of groups or classes of aliens, rather than individuals, originated with the Hungarian refugee crisis. By 1958, 32,000 Hungarians had been paroled into the United States.

The use of parole for large groups of refugees was sanctioned by Congress with its enactment of the Fair Share Law of 1960. This legislation was intended to provide for the admission into the United States of a portion of refugees remaining in refugee camps in Europe under the mandate of the United Nations High Commissioner for Refugees. The Fair Share Law gave special authority to the Attorney General to use the parole authority to admit our "fair share" of these refugees specified to be 25 percent of the number of similar refugees resettled in nations other than the United States. The statute also provided for the adjustment of status of the parolees after two years residence in the United States. The limited refugee admissions provisions of this legislation, originally due to expire July 1, 1962, were extended by the Migration and Refugee Assistance Act of 1962.

The 1965 amendments to the Immigration and Nationality Act (act of October 3, 1965; 79 Stat. 911) established the first permanent statutory basis for the admission of refugees. Section 203(a)(7) made provision for the conditional entry of refugees as the seventh preference category of the preference system. In order to be eligible for conditional entry, the alien must have fled a Communist country or a country in the Middle East and be unable to return because of persecution on account of race, religion, or political opinion, or must be the victim of a natural disaster. While conditional entry is not admission to this country for permanent residence, those entering under that section may have their status adjusted after two years in the United States. The number of conditional entries available today is 17,400—a number far too low to respond to the current worldwide refugee situation.

When the conditional entry provision was enacted in 1965, Congress reiterated its original intent that the parole provision be used only for isolated, individual cases. However, due to the numerical, ideological and geographic limitations of the conditional entry provision, parole has continued to be the basis for the entry of large groups of refugees into the United States. A notable example is the Cuban refugee program. Cubans were initially paroled into the United States in 1961 when diplomatic relations were severed with Cuba. After the Cuban airlift program was announced by President Johnson in 1965, the number of refugees from Cuba coming into the United States increased dramatically. Because the 1965 amendments limited the applicability of the preference system to the Eastern Hemisphere, Cubans were ineligible for seventh preference conditional entry. As a result, it was necessary for President Johnson to resort, once again, to the parole authority. To date more than 600,000 Cubans have entered the United States as parolees. Special legislation was enacted in 1966 (act of November 2, 1966; 80 Stat. 1161) to adjust the status of Cuban parolees.

While the primary vehicle for admitting refugees prior to 1960 was special legislation, since that time refugees have been admitted under a variety of procedures including parole, nonpreference visas, and the conditional entry provisions in the 1965 Act. In addition to the Cuban refugees mentioned above, parole was utilized in the 1960's and early 1970's for Chinese refugees from Hong Kong and Macao, Czechoslovakian refugees, Soviet Jewish refugees, and Ugandan refugees. More recently, parole has been used for admitting Chilean refugees, Cuban prisoners, Latin American refugees and detainees, and over 250,000 Indochinese refugees.

Prior to 1960, U.S. refugee funding was largely confined to participation in the activities of international organizations aiding refugees, and to funding specific programs for refugee assistance abroad. Direct Federal financial assistance to refugees in this country began in December 1960, when President Eisenhower authorized $1 million from the President's contingency Fund under the Mutual Security Act of 1954 for use in establishing and operating a Cuban refugee emergency center in Miami. In January 1961, President Kennedy issued a directive officially establishing the Cuban Refugee Program under the authority of the Department of Health, Education, and Welfare. An additional $4 million was authorized from the Mutual Security contingency fund for use through June 30, 1961. During 1962, financing was provided from the President's contingency fund under the Foreign Assistance Act of 1961.

In 1961 legislation was proposed by the Kennedy administration, in the words of the President, "to centralize the authority to conduct and to appropriate funds to support U.S. programs of assistance to refugees, escapees, migrants and selected persons." This legislation, which was enacted as the Migration and Refugee Assistance Act of 1962 (act of June 28, 1962, Public Law 87-510, 76 Stat. 121), authorized the continued participation of the United States in the Intergovernmental Committee for European Migration (ICEM), United States contributions to the United States High Commissioner for Refugees (UNHCR), and unilateral United States assistance for refugees, all of which had previously been authorized under the Mutual Security Act of 1954. The legislation also provided an open-ended authorization for assistance to Cuban refugees in the United States. This law, which this Committee exclusively considered, remains the legal basis for most of our country's migration and refugee assistance programs.

With the influx of Indochinese refugees in 1975, it was necessary to separately authorize assistance for this refugee group since the Migration and Refugee Assistance Act confined its authority to resettlement of Western Hemisphere refugees. The Indochina Migration and Refugee Assistance Act of 1975 (Public Law 94-23) authorized assistance to or on behalf of Indochinese refugees under the terms of the Migration and Refugee Assistance Act. Funding for the initial phase of the Indochinese refugee program was aimed at the evacuation and temporary care of these refugees (administered by the Department of State) and their resettlement in the United States (administered by the Department of Health, Education, and Welfare). The 1975 Act has been amended three times for the purposes of extending it to include Laotian refugees and extending the authorization period for domestic assistance. The 1975 legislation expired on September 30, 1979.

Assistance has also been provided for the resettlement of Soviet Jews in this country. Most recently, the Foreign Assistance Appropriations Act for fiscal year 1979 earmarked $20 million for expenditure by the Department of Health, Education, and Welfare for an assistance program for Soviets and other refugees not covered by the Cuban and Indochinese programs.

NEED FOR LEGISLATION

There are several inescapable conclusions that can be drawn from the brief review of the United States' response to refugee problems over the last 30 years. First, the need for resettlement of refugees is neither unusual nor incidental, but is a continuing problem which must be faced by all nations, including the United States. Second, the United States has lacked a consistent refugee admissions policy and, as a result, our response to refugee emergencies has been haphazard, incoherent and often inadequate. Third, previous domestic assistance programs have been unrealistically limited both in scope and duration. These inadequacies have long been recognized by the legislative and executive branches and led to a concerted effort in this Congress to enact remedial legislation.

In transmitting the draft legislation to the Congress on March 7, 1979, Secretary of State Cyrus Vance noted that the bill provides a "more rational, stable and equitable Federal policy for the admission of refugees to this country and for assistance to them within the United States." In later testimony before the Subcommittee on Immigration, Refugees, and International Law on the refugee crisis in Indochina, he reiterated the urgent need for this legislation:

> This vital legislation will provide. for the first time, a comprehensive framework for responding effectively to refugee crises of this gravity.

Chairman Rodino summarized the need for comprehensive refugee legislation in his remarks to the House upon introducing H.R. 2816:

> Our history in refugee crises has been one of reaction rather than one of anticipation, preparation and long-range planning.
>
> This was brought forcefully to our attention in the spring of 1975 when in the wake of our withdrawal from Vietnam we were faced with having to care for and resettle immediately more than 135,000 refugees who had been associated with our presence in that area. The Committee and the House acted promptly and positively in enacting special legislation to respond to that emergency. This experience demonstrated, in a dramatic way, the necessity for enacting coherent legislation to meet future and continuing refugee emergencies.

To create a truly comprehensive approach to refugees, the committee has determined that any new statute must consolidate admissions and resettlement policies. Among the major consequences of our piecemeal approach to refugee crises has been the lack of coordination of resettlement assistance programs with refugee admissions. In its recent report, "The Indochinese Exodus: A Humanitarian Dilemma" (April 24, 1979), the General Accounting Office (GAO) commented at length on the deficiencies of current law in this regard and noted that the instant legislation "addresses the major problems stemming from existing laws." In particular, GAO observed that "current law does not clearly express U.S. intentions and commitments to refugee resettlement and has made planning and processing of refugees very difficult." (GAO Report, page iv.)

The Committee believes that the problems of fragmentation and lack of coordination at the Federal level will be greatly alleviated by this legislation which establishes a statutory mechanism for the admission of refugees and for the provision of domestic resettlement assistance. By combining our admissions and resettlement policies into one permanent statute, the legislation accomplishes two important objectives. First, it assures the countries of first asylum and the international community that the United States has an ongoing program of refugee resettlement. Second, it assures State and local governments that they will not be unduly burdened by Federal decisions to admit refugees.

HISTORY OF LEGISLATION

Experience during the 94th and 95th Congresses with the emergency enactment and subsequent extensions of the Indochina Migration and Refugee Assistance Act of 1975 clearly demonstrates the need for a permanent United States refugee policy. Cognizant of this need, the Committee began its active consideration of comprehensive refugee legislation early in the 95th Congress. Three days of hearings were held by the House Judiciary Subcommittee on Immigration, Citizenship, and International Law on H.R. 3056 in February, March, and April 1977 ("Admission of Refugees into the United States," 95th Cong. 1st sess. 1977, Ser. No. 5). A clean bill, H.R. 7175, was reported on May 13, 1977, following two days of Subcommitte mark-up, but no further action was taken by the full Judiciary Committee.

In the 96th Congress, H.R. 2816, the Refugee Act of 1979, was introduced on March 13, 1979 by Committee Chairman Peter W. Rodino, Jr., and Congresswoman Elizabeth Holtzman, Chairwoman of the Subcommittee on Immigration, Refugees, and International Law. The bill, introduced on behalf of the Carter Administration, was the subject of five days of hearings in May 1979 ("Refugee Act of 1979," 96th Cong. 1st sess. 1979, Ser. No. 10).

During the course of these hearings testimony was received from the following Federal officials: Attorney General Griffin Bell, Secretary of Health, Education, and Welfare, Joseph A. Califano, Jr., United States Coordinator for Refugee Affairs, Dick Clark, and the General Accounting Office. Other witnesses included representatives of State Governments, voluntary agencies, Amnesty International, the American Civil Liberties Union, and the National Coalition for Refugee Resettlement. The Subcommittee also received extensive testimony from research scholars and resettlement experts concerning domestic aspects of our refugee policies and resettlement approaches utilized by other countries.

During Subcommittee mark-up of H.R. 2816 on August 1, 1979, Congresswoman Holtzman offered an amendment in the nature of a substitute which made significant changes in the original legislation. A single Subcommittee amendment to H.R. 2816 was approved and the bill, as amended, was ordered favorably reported to the full Committee on August 2, 1979. Following two days of full Committee mark-up, on September 13 and 19, 1979, and on the latter date, the Committee ordered the bill (H.R. 2816) favorably reported to the House, with an amendment, by a vote of 20–6.

In order to expedite consideration of the legislation, the Committee on Foreign Affairs agreed not to insist on sequential referral of those provisions in the original bill or in the reported bill which may have affected its jurisdiction. This position was set forth in the following letter from the Honorable Clement J. Zablocki, Chairman of the House Committee on Foreign Affairs, to Chairman Rodino:

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FOREIGN AFFAIRS,
Washington, D.C., November 1, 1979.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary, U.S. House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: I am writing with regard to H.R. 2816, the Refugee Act of 1979, which has been ordered favorably reported as amended by the Committee on the Judiciary. As you know, substantial portions of this bill fall within the jurisdiction of the Committee on Foreign Affairs, and the normal legislative procedure would be for referral of H.R. 2816 as amended to this committee for consideration of those portions. However, because of the urgent need for expeditious passage of this legislation, we are willing to accept your request that we not insist on sequential referral of H.R. 2816 to this committee with the understanding that such action does not in any way diminish or prejudice the jurisdiction and continuing interest of the Committee on Foreign Affairs with regard to the bill or the subject matter addressed therein.

Since the determination of the numbers and kinds of refugees to be admitted to the United States are issues involving U.S. foreign policy considerations, the Attorney General will necessarily have to consult with the Secretary of State on these matters. In addition, the Committee on Foreign Affairs will continue to exercise its jurisdiction with respect to refugee matters including the Office of the U.S. Coordinator for Refugee Affairs in the Department of State.

Concerning several specific matters in H.R. 2816 as amended which are of concern to the Foreign Affairs Committee, please be advised that the Honorable Dante B. Fascell, Chairman of the Subcommittee on International Operations, intends to offer amendments dealing with the following subjects when H.R. 2816 is considered on the House floor: (1) definition of a "refugee"; (2) role of an Office of Refugee Resettlement in the Department of Health, Education, and Welfare; and (3) raising the funding ceiling of the Emergency Migration and Refugee Fund. It would be appreciated if you would include this letter in your committee's report on H.R. 2816.

Thanking you for your cooperation, I remain

Sincerely yours,

CLEMENT J. ZABLOCKI,
Chairman.

[The response to the November 1, 1979 letter follows:]

CONGRESS OF THE UNITED STATES,
COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
Washington, D.C., November 2, 1979.

Hon. CLEMENT ZABLOCKI, M.C.
Chairman, Committee on Foreign Affairs,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your letter of November 1 regarding H.R. 2816, the Refugee Act of 1979, which has been ordered favorably reported with an amendment by this Committee.

In accordance with your request, your letter will be inserted in our Committee report on the legislation. I certainly appreciate your agreement not to insist on sequential referral of the bill due to the urgent need to expedite House consideration of this legislation.

It is evident that the jurisdictional situation regarding refugee legislation is in need of clarification and I am hopeful that appropriate arrangements can be made in the future to resolve this difficult problem. In this regard, it should be noted that the Committee's elimination of proposed amendments to the Migration and Refugee Assistance

Act of 1962 does not represent any cession of jurisdiction over that Act or expenditures which are made thereunder.

Once again, I wish to express my appreciation to you for your cooperation and for your interest in expediting consideration of this legislation.

Kind regards,
Sincerely,

PETER W. RODINO, Jr., *Chairman.*

ANALYSIS OF THE LEGISLATION, AS AMENDED

TITLE II—ADMISSION OF REFUGEES

New definition of "refugee"

The Committee Amendment provides a new definition of the term "refugee" which will be added to the Immigration and Nationality Act. The first part of the new definition essentially conforms to that used under the United Nations Convention and Protocol Relating to the Status of Refugees (to which the United States is a party), and eliminates the geographical and ideological restrictions now applicable to conditional entrant refugees under section 203(a)(7) of the Act. A "refugee" is defined as "any person who is outside . . . [his or her] country . . . who is unable or unwilling to return to . . . that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group or political opinion."

The Committee feels that the definition of "refugee" in present law, which is limited to those fleeing communist countries or the Middle East, is clearly unresponsive to the current diversity of refugee populations and does not adequately reflect the United States' traditional humanitarian concern for refugees throughout the world. All witnesses appearing before the Committee strongly endorsed the new definition, which will finally bring United States law into conformity with the internationally-accepted definition of the term "refugee" set forth in the 1951 United Nations Refugee Convention and the Protocol which our Government ratified in 1968.

The Committee Amendment also includes in the new definition those persecuted or who have a well-founded fear of persecution within their own country on account of race, religion, nationality, membership in a particular social group, or political opinion. While these individuals are not covered by the U.N. Convention, the Committee believes it is essential in the definition to give the United States sufficient flexibility to respond to situations involving political or religious dissidents and detainees throughout the world. The need to provide for prisoners of conscience and those threatened with persecution is already recognized in United States policy and the Attorney General's parole authority has traditionally been used to aid such persons. Recent examples of these parole programs are the Chilean and Cuban prisoners brought directly into the United States; in each of these cases, the local government agreed to release political prisoners on the condition that they obtain resettlement in another country. There is also currently a hemispheric parole program for prisoners in Argentina and other Latin American countries. Additionally, the Committee feels this language is necessary to handle situations like the evacuation of Saigon in 1975, where our Government wished to aid persons who were not able to flee to a country of first asylum.

Although the definition of "refugee" in the bill originally submitted by the Administration did not explicitly include those within their own country, Administration witnesses testified that they intended to cover such individuals and believed that the original proposal adequately provided for them. Ambassador Dick Clark, the United States Coordinator for Refugee Affairs, stated that "the bill doesn't preclude categories of people subject to oppression within their own country. This is done by repealing that section of the law that presently requires a refugee to go to a second country." (*Hearings*, page 67.) Nonetheless, the Committee concluded that the definition should be clarified, and numerous witnesses supported this approach, including Amnesty International, the voluntary agencies, the American Civil Liberties Union, HIAS, and the American Jewish Committee.

The Committee carefully considered arguments that the new definition might expand the numbers of refugees eligible to come to the United States and force substantially greater refugee admissions than the country could absorb. However, merely because an individual or group of refugees comes within the definition will not guarantee resettlement in the United States. The Committee is of the opinion that the new definition does not create a new and expanded means of entry, but instead regularizes and formalizes the policies and the practices that have been followed in recent years.

The Committee Amendment also adds language specifically to exclude from the definition of "refugee" those who themselves engaged in persecution. This is consistent with the U.N. Convention (which does not apply to those who, *inter alia*, "committed a crime against peace, a war crime, or a crime against humanity"), and with the two special statutory enactments under which refugees were admitted to this country after World War II, the Displaced Persons Act of 1948 and the Refugee Relief Act of 1953.

Annual admission of refugees

The Committee Amendment for the first time establishes a comprehensive statutory procedure for the admission of refugees to replace the limited conditional entry and open-ended parole provisions of current law. Under a new section 207(a), to be added to the Immigration and Nationality Act, no more than 50,000 refugees may be admitted each year, except in cases where the President, prior to the beginning of the fiscal year and after consultation with the Committees on the Judiciary, determines that there is a foreseeable need to admit a greater number and it is justified by humanitarian concerns.

The allocation of refugee admissions—that is, which individuals and groups of refugees will be admitted to the United States—will be based on a determination made by the President, again after consultation with Congress. Importantly, although consultation with Congress with respect to numbers of refugees admitted is only required when the 50,000 limit is exceeded, consultation on allocations of refugee admissions is mandated in all cases. Only refugees of "special humanitarian concern" to the United States will be eligible for admission.

The need for this new statutory framework was emphasized by Attorney General Bell in his testimony before the Committee:

> Mr. **Bell**. Under the current law, the Attorney General has the sole authority under the Immigration and Nationality Act for the admission of refugees, either through the conditional entry provisions or the exercise of the parole power.
>
> The numbers of refugees admitted through use of the parole power have become far greater than was contemplated by Congress.
>
> This authority, which rests solely with the Attorney General, has the practical effect of giving to the Attorney General more power than the Congress in determining limits on the entry of refugees into the country. The bill transfers the responsibility for refugee policy decisions to the President in consultation with the Congress.
>
> The Department of Justice welcomes and is in complete agreement with this change.
>
> The transfer of policymaking authority to the President recognizes that these decisions are of such importance to the United States that they should be made only at the highest level. The bill provides for policy direction by the President, and also formally recognizes the importance of productive consultation with the Congress on refugee matters. (Hearings, page 22.)

The 50,000 normal flow figure was selected based on past experience with refugee outflows from Southeast Asia, the Soviet Union, Eastern Europe and other areas. The Committee took note of the fact that this ceiling would have been adequate to respond to every refugee situation in recent years under the normal flow provisions except for the mass exodus after the collapse of South Vietnam in 1975 and the current crisis in Southeast Asia. Although it has become increasingly clear that the 50,000 figure will not be sufficient for the next several fiscal years, in view of the fact that this legislation is expected to create a permanent statutory framework, the Committee believes that it is inadvisable to set a higher limit based on the present situation in Indochina. To do so would skew the statute. The Committee continues to believe that the 50,000 limit will be reasonable once the current crisis has abated.

Although the 50,000 figure represents an increase over the 17,400 admissions allowed under the present 203(a)(7) conditional entry provision, the number does not actually increase overall annual refugee admissions to the United States, since the Attorney General's parole authority has consistently been used to exceed substantially the conditional entry ceiling.

The annual 50,000 refugee numbers provided in the Committee Amendment will be obtained by reassigning 20,000 numbers from the yearly worldwide immigration ceiling of 290,000. Of these numbers, 17,400 are currently allocated to conditional entrants under section 203(a)(7), which the Committee Amendment repeals. The remaining 30,000 numbers will be added to the present worldwide limitation. However, in years when refugee admissions are increased by a Presidential determination after consultation with Congress, this figure can be exceeded.

Admission of refugees in emergency situations

The Committee Amendment also establishes procedures to admit refugees when unforeseen emergency situations develop. If the President determines, after consultation with the Judiciary Committees, that an unforeseen emergency refugee situation exists, that the admission of refugees in response to the situation is justified by grave humanitarian concerns, and that admissions cannot be accomplished under the normal flow provisions, he may fix a number of refugees to be admitted for up to one year. The admission numbers will be allocated among refugees of "special humanitarian concern" to the United States as determined by the President after consultation with Congress.

The emergency admission procedures are limited to circumstances which are unforeseen prior to the beginning of the fiscal year. The Committee intends that refugee situations which can be foreseen before the fiscal year begins should be handled through normal flow provisions. Obviously, no piece of legislation can specify with certainty all the possible situations which would qualify as unforeseen emergencies. Nonetheless, some examples might be: a dramatic increase in the number of refugees in an area of the world where outflows were foreseen but at a substantially lower level; an unexpected exodus of refugees from a country from which there has been no refugee flow previously, due, for example, to a change in government; a diplomatic breakthrough resulting in a foreign government's willingness to release large numbers of political or religious dissidents; or urgent problems affecting countries of first asylum and requiring immediate action to preserve peace and stability in the area or to save refugee lives.

The Committee Amendment requires that the admission of refugees under the emergency flow provision be justified by "grave humanitarian concerns." This is a stricter standard than that required for the admission of refugees under the normal flow procedures, which must be warranted by "humanitarian concerns." The Committee intends by this stricter standard to limit the emergency admission procedures to situations where the refugees' lives are placed in immediate jeopardy, where their personal safety is threatened or where there is an imminent possibility of loss of freedom.

Although the nature of emergency refugee situations makes the imposition of a rigid statutory ceiling on the number of refugees to be admitted impractical, the Committee Amendment does limit the President's authority to admit refugees under this provision to a maximum 12 month period. It is the intent of the Committee that the President should admit refugees under this provision only until the beginning of the next fiscal year when the emergency situation refugees should be included in the determination of that fiscal year's normal flow numbers and allocations made after consultation with Congress.

Refugees of "special humanitarian concern"

Under the Committee Amendment all refugee admission numbers—whether normal flow or emergency—will be allocated to refugees of "special humanitarian concern" to the United States. The legislation does not—and cannot—further define this phrase. The Committee believes that any attempt to do so would unnecessarily restrict future public policy decisions. The Committee recognizes that determining which refugees are of "special humanitarian concern" to the United States will be a matter to be considered, debated and decided at the time refugee situations develop.

As originally introduced, the bill provided for allocations to be made among refugees of "special concern" to the United States. However, several witnesses expressed reservations about this formulation, the substance of which is reflected in the following colloquy between Congresswoman Holtzman and U.S. Refugee Coordinator Clark:

> Ms. HOLTZMAN. Let me turn to the issue of which refugees we are going to consider for admission.
>
> The only standard is persons of "special concern," and that term is wholly undefined, although in your testimony you point out certain features, for example, "whether the refugees have cultural, historical, or especially family ties to the United States."
>
> Now, it was only recently that we abolished the national origins character of our immigration laws where we provided favorable treatment to those persons whom we thought had "cultural or historical" ties to the United States.
>
> Are we reinstituting national origin quotas?
>
> Mr. CLARK. No; as a matter of fact I think probably that this was an attempt to try to look a little more closely at what we mean by "special concern." But I must say, I share the Attorney General's reluctance in trying to define it, because as soon as you begin to try to define it, that's exactly the kind of problems you run into. . . .
>
> Family ties, I think, is pretty legitimate, because it tracks cloely with our immigration policies. And I think it's natural that those people with family ties we would consider of special concern.
>
> But I agree that we'd get into more dangerous territory when you start talking about narrowing that definition, to cultural, or historical, or anything else. (Hearings, page 67.)

By changing the standard to refugees of "special humanitarian concern," the Committee intends to emphasize that the plight of the refugees themselves, as opposed to national origins or political considerations, should be paramount in determining which refugees are to be admitted to the United States.

The Committee does believe that past history can give some guidance as to the range of factors that may be considered in determining whether refugees are of "special humanitarian concern" to the United States. In addition to the plight of the refugees, the pattern of human rights violations in the country of origin (including the extent of persecution to which they have been subjected and the severity of their present situation), family ties, historical, cultural or religious ties, the likelihood of finding sanctuary elsewhere, and previous contact with the United States Government have all been legitimately employed as criteria in selecting refugees for admission to this country. Further, the United States in the past has responded generously to refugees from countries with which we have been directly involved or with which we have treaty obligations.

In recent months, many Members of Congress have stressed our government's special relationship with, and special responsibility for, the Hmong (or Meo) tribesmen from North Central Laos. Many of these refugees were closely associated with the United States as the result of their service with Vang Pao's "Secret Army," which was supported and financed by the Central Intelligence Agency for many years. The Members of this Committee are deeply concerned over the plight of the Hmong refugees and the consultative Members of the Committee have communicated their concerns to the Departments of State and Justice on several occasions. Following a trip to Southeast Asia in February of this year, Congresswoman Holtzman and Congressman Fish strongly urged that additional parole numbers be allocated to land cases in Thailand in order to expand resettlement opportunities in this country for the Hmong.

Consultation

The Committee has made every effort to assure that Congress has a proper and substantial role in all decisions on refugee admissions. In the past, the Attorney General's consultation with this Committee regarding admissions has been merely a matter of courtesy or custom. Consequently, unlike the bill initially submitted by the Administration, the Committee Amendment explicitly defines the consultation process.

Specifically, the Committee Amendment states that consultation means "discussions in person by designated Cabinet-level representatives of the President with members of the Committees on the Judiciary . . . to review the refugee situation or emergency refugee situation, to project the extent of possible participation of the United States therein, to discuss the reasons for believing that the proposed admission of refugees is justified by humanitarian concerns" and to provide detailed information, as follows:

(1) A description of the nature of the refugee situation;

(2) A description of the number and allocation of the refugees to be admitted;

(3) A description of the proposed plans for their resettlement and the estimated cost of their movement and resettlement;

(4) An analysis of the anticipated social, economic, and demographic impact of their admission to the United States;

(5) Such additional information as may be appropriate or requested by such members.

The Committee cannot overemphasize the importance it attaches to consultation. The Congress is charged under the Constitution with the responsibility for the regulation of immigration, and this responsibility continues with respect to refugee admissions.

Although no time limit is stipulated in the legislation for the completion of the consultation process, the Committee expects it to be accomplished expeditiously. The Committee Amendment does specify that, to the extent possible, the information required shall be provided to the Committee members at least two weeks in advance of the meeting with the President's representatives. In view of this, and the urgency of many refugee situations, it is expected that the whole process should not take longer than 15–20 days.

The Committee wishes to make it clear that its prior consultative practice will be followed once this legislation is enacted. The practice has traditionally involved consultation with the Chairs of the full Judiciary Committee and the Subcommittee on Immigration, Refugees, and International Law, as well as the Ranking Minority Members of the full Committee and that Subcommittee. The Committee intends that consultation in the future will include these Members of the Committee.

Although the Committee Amendment does not set forth what action is required to conclude the consultation process, the Committee believes it is clear that the Administration cannot move ahead to admit additional refugees after consultation until some response has been received from the consultative members. This was the Administration's position during testimony on the original bill (which did not include an explicit description of the consultation process):

> Ms. HOLTZMAN. I'm glad you mentioned the role of Congress.
>
> Mr. Attorney General, in the bill there are several instances in which consultation with the Congress is required; one, for example, is in the admission of emergency situation refugees. What does consultation mean? Does it mean that the President can come to the Congress and say, we are going to admit 1 million, 2 million, or 10 million refugees because this is an emergency? What, then , is the role of Congress? Can the committee say, well, we don't think the number should be so high, or we think the people should be admitted from a different country?
>
> The consultation process is not formalized; there is no description of what role the Congress actually has. There is no requirement that the President take account of concerns or disagreements that Congress expresses.
>
> Do you think consultation procedures will protect the role of Congress?
>
> Mr. BELL. This morning we are in the process of making legislative history and I will give you my view of what the consultation process means, or ought to mean. There are legal writings on this approach.
>
> I would treat the consultation process as a report-and-wait provision. Report-and-wait provisions are prone to the law of legislative veto.
>
> The executive department and the President, by consulting, reports to the Congress what he wants to do and gives it a certain period of time within which, not only to consult, but to act, if it wishes to act. You might say we don't agree with that; we want to block that.
>
> But I wouldn't make it set a number of days in which the Congress has to act. That's beyond the spirit of a good faith consultation. However, the period of consultation ought to be long enough for the Congress to decide whether or not it agrees.

> So the law, I think, would be akin to a report-and-wait provision. If that is in the legislative history, you will find that everyone will understand that. (Hearings, pages 23–24.)

The Committee believes that two other changes in the original legislation also will strengthen the consultation process. First, consultation is required on the allocation of all refugees admitted to the United States, in addition to the consultation on numbers above 50,000 and in emergency situations. (The Committee believes that in most cases consultations on numbers and allocations can occur simultaneously.) Second, the President is required to designate a Cabinet member to participate in consultations with the Judiciary Committees. In view of the fact that the Attorney General has traditionally represented the Administration in refugee consultations and because of the importance of the refugee issue, the committee feels such a requirement is warranted. Nonetheless, the Committee does not wish to preclude other Administration representatives from participating in the consultation process, and expects that the U.S. Coordinator for Refugee Affairs, for example, will accompany the designated cabinet member.

The Committee wishes to make it clear that the consultative procedure specified in this bill is not intended to preclude the exercise of oversight responsibilities by other appropriate Committees of the Congress. The Committee would expect that the Foreign Affairs Committee will oversee those aspects of worldwide refugee problems within its jurisdiction and will be in consultation with the Department of State regarding, among other matters, the impact of refugee problems on the various countries of first asylum, and the Attorney General will necessarily have to consult with the Secretary of State on these matters.

Admission status

The Committee Amendment provides that all refugees—both those coming to the United States under the normal flow provisions and those entering in emergency situations—will be admitted as refugees, rather than as lawful permanent residents. Admitting refugees as refugees—in effect granting them a new status—will allow officials to conduct better and more intensive screening prior to granting them lawful permanent residence. Although the bill as originally drafted by the Administration admitted normal flow refugees as lawful permanent residents, in testimony before the Committee, Attorney General Bell stated clearly in the following colloquy with Congresswoman Holtzman that he was not satisfied with current screening procedures and that he would support a status akin to conditional entry after admission:

> Ms. HOLTZMAN. Mr. Attorney General, I'm concerned about the fact that under this bill refugees will be admitted immediately to the United States as permanent residents. What concerns me is that this means that our ability to screen the refugees will be seriously impaired.
>
> Are you satisfied with the present screening procedures that we have? Do you think that the intelligence agencies and the drug enforcement agencies are giving the Immigration Serv-

> ice the best possible information to make decisions and judgments on people who are coming here?
>
> Mr. BELL. I couldn't say that I'm totally satisfied. These things are done on an emergency basis, and it could be that someone slips through. We are operating with large numbers, so I wouldn't be able to assure the committee that someone is not slipping through that should not.
>
> Ms. HOLTZMAN. I take it, then, that if the committee reviewed this and decided perhaps the conditional entry program ought to remain in some form, that you would——
>
> Mr. BELL. I would not object to that. (Hearings, page 36.)

Applicants for admission as refugees will be required to establish that they come within the refugee definition, that they have not become firmly resettled in any foreign country, and that they are admissible as immigrants under the Immigration and Nationality Act, with certain exceptions.

Asylum and Withholding of Deportation

Since 1968, the United States has been a party to the United Nations Refugee Protocol which incorporates the substance of the 1951 U.N. Convention of Refugees and which seeks to insure fair and humane treatment for refugees within the territory of the contracting states.

Article 33 of the Convention, with certain exceptions, prohibits contracting states from expelling or returning a refugee to a territory where his or her life or freedom would be threatened on account of race, religion, nationality, membership in a particular social group or political opinion. The Committee Amendment conforms United States statutory law to our obligations under Article 33 in two of its provisions:

(1) *Asylum.*—The Committee Amendment establishes for the first time a provision in Federal law specifically relating to asylum. A new section 208 of the Immigration and Nationality Act, added by the legislation, requires the Attorney General to establish (within 60 days) a procedure under which an alien either in the United States or seeking entry can apply for asylum, and authorizes the Attorney General to grant asylum if he determines that the alien is a refugee within the meaning of the bill. The Committee Amendment also entitles the spouse or child of an alien granted asylum to the same status, if not otherwise eligible. A grant of asylum under the section can be terminated if the Attorney General, in accordance with prescribed regulations, determines that the alien is no longer a refugee because of changes in circumstances in the alien's country of nationality or residence.

Currently, United States asylum procedures are governed by regulations promulgated by the Attorney General under the authority of section 103 of the Immigration and Nationality Act (see 8 CFR 108), which grants the Attorney General authority to administer and enforce laws relating to immigration. No specific statutory basis for United States asylum policy currently exists. The asylum provision of this legislation would provide such a basis.

The Committee wishes to insure a fair and workable asylum policy which is consistent with this country's tradition of welcoming the oppressed of other nations and with our obligations under international law, and feels it is both necessary and desirable that United States domestic law include the asylum provision in the instant legislation. The Committee intends to monitor closely the Attorney General's implementation of the section so as to insure the rights of those it seeks to protect.

(2) *Withholding of Deportation.*—Related to Article 33 is the implementation of section 243(h) of the Immigration and Nationality Act. That section currently authorizes the Attorney General to withhold the deportation of any alien in the United States to any country where, in his opinion, the alien would be subject to persecution on account of race, religion, or political opinion.

Although this section has been held by court and administrative decisions to accord to aliens the protection required under Article 33, the Committee feels it is desirable, for the sake of clarity, to conform the language of that section to the Convention. This legislation does so by prohibiting, with certain exceptions, the deportation of an alien to any country if the Attorney General determines that the alien's life or freedom would be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion. The exceptions are those provided in the Convention relating to aliens who have themselves participated in persecution; who have been convicted of particularly serious crimes which make them a danger to the community of the United States; with respect to whom there are serious reasons for considering that they have committed a serious non-political crime outside the United States prior to admission; or who may be regarded as a danger to the security of the United States.

As with the asylum provision, the Committee feels that the proposed change in section 243(h) is necessary so that U.S. statutory law clearly reflects our legal obligations under international agreements.

Adjustment of Status Provisions

The Committee Amendment provides in section 209 for adjustment of status of both refugees and those granted asylum. Adjustment is authorized for any refugee admitted under section 207—either under the normal flow provision or in an emergency situation—whose entry has not been terminated by the Attorney General, who has been physically present in the United States for at least two years, and who has not otherwise acquired lawful permanent resident status. Those seeking adjustment also must meet the admission requirements of normal immigrants (with some exceptions). Once granted, the lawful resident status operates retroactively to the date of the refugees' arrival in the United States, so that in terms of eligibility for naturalization the refugee is not disadvantaged by the waiting period.

The legislation also provides that 5,000 of the normal flow admission numbers authorized under section 207 may be used to adjust to the status of lawful permanent resident any alien granted asylum under section 208. Applicants must establish that they have been present in the United States for two years after being granted asylum, that they continue to meet the refugee definition, that they are not firmly resettled in any foreign country, and that they are admissible as immigrants (again, with certain exceptions). The permanent resident status will be recorded as of the date two years prior to the approval of the application.

TITLE III—RESETTLEMENT OF REFUGEES

Program Goals and Priorities

The purpose of Title III of the legislation is to establish an equitable, permanent and accountable resettlement program for refugees.

One of the primary criticisms of current resettlement policies and procedures is that separate programs—providing different types and levels of assistance—have been developed based on the nationality of the particular refugee group. This "patchwork" of Federal programs is not only inequitable, but it has also seriously hindered effective resettlement and generated considerable confusion among public and private agencies involved in resettlement activities. Secretary of Health, Education, and Welfare Califano commented on the problem during his testimony:

> After much thought and evaluation, we are convinced that a single authority for domestic assistance will help us respond better to changing world circumstances, and to all groups of refugees. With a unified refugee policy, we feel we can do a better job. (Hearings, page 224.)

The Committee shares this view and believes that assistance should be provided to refugees regardless of their country of origin. As a result Title III makes domestic resettlement services available to all refugees. In the Committee's judgment, this development of an equitable and consistent resettlement policy is long overdue.

Another serious problem—and one that has particularly plagued the Indochinese Refugees Assistance Program (IRAP)—has been the absence of permanent funding to support resettlement efforts. The temporary nature of the original IRAP program, coupled with "last minute" extensions of the program in 1977 and 1978, has precluded effective planning, management, and evaluation. Due to the lack of dependable Federal funding, state and local governments have been required to structure their programs on a temporary basis with a view to eventual termination. Further, past experience with Indochinese as well as other refugee groups clearly demonstrates that decisions on the admission of refugees were made independent of, and without proper consideration to, their resettlement needs. Title III addresses this problem by establishing a permanent statutory mechanism for the provision of resettlement assistance. In the words of one GAO witness before the Committee:

> A positive and predictable Federal policy for refugee admissions and resettlement would help assure that effective refugee resettlement is a product of a more organized and consistent national effort, rather than of fortunate circumstance. (Hearings, page 154.)

Another objective of this Title is to insure accountability and flexibility in the implementation of the resettlement program. Currently, there is no Federal department, agency, or office charged by statute with the responsibility for administering our domestic resettlement program (This situation would have remained unchanged under the Administration's draft bill.) As a result, there has been a distinct lack of leadership and direction at the Federal level. As GAO indicated in its report:

> there are no detailed and comprehensive program guidelines * * * [and] one regional official noted, no program evaluations had been made because he felt there are no program evaluation guidelines. (GAO Report, page 81.)

During the course of the Immigration Refugees, and International Law Subcommittee's extensive hearings, Congresswoman Holtzman repeated her concerns that the program lacked coordination and accountability, and suffered from the absence of defined goals and priorities. The Committee Amendment would correct these problems by: (1) creating a high-level Office of Refugee Resettlement within HEW (described further below); (2) requiring detailed monitoring and evaluation of the resettlement program; (3) requiring detailed reports to the Congress on the operation of the program and the activities of the aforementioned Office; and (4) requiring states to submit resettlement plans and report on the use of Federal funds in previous fiscal years.

In light of the serious problems confronting our domestic resettlement efforts, the Committee rejected the open-ended and ambiguous approach contained in Title III of the Administration's bill. Those provisions would have made few, if any, changes in the structure and operation of the existing resettlement program. Instead, the Committee felt that it was necessary to include in this legislation specific guidance concerning program priorities and objectives. In particular, the Committee bill is designed to:

(1) insure state and local government involvement in the resettlement process;

(2) insure that essential services are made available to refugee women and children;

(3) require Federal and state-wide coordination in the expenditure of resettlement funds;

(4) improve medical screening procedures; and

(5) expand and intensify language, job training, and other programs which promote economic self-sufficiency.

Office of Refugee Resettlement

The Committee Amendment creates an Office of Refugee Resettlement in HEW with its Director reporting to the Secretary of HEW. The Office will provide a high-level focal point for state and local governments, as well as for public and private agencies involved in the resettlement process. It also makes a designated Federal official accountable both to the Congress and to the American public for all aspects of the domestic resettlement process.

The Committee is convinced that the creation of this Office is essential in order to insure proper planning, coordination, and accountability in the administration of the United States resettlement program. At the same time, the legislation provides a large degree of flexibility in the operation of the program. For example, it authorizes cooperative arrangements with other offices within HEW, as well as with other agencies and departments. The Committee wishes to make it clear that this Office does not interfere with, duplicate, or conflict with any function currently performed by the United States Coordinator for Refugee Affairs (except for the transfer of reception and placement grants to HEW after fiscal year 1980). The Committee does not intend to diminish in any way the responsibility or authority of the U.S. Coordinator. The Office is charged with the responsibility of administering programs which are already being administered by HEW or which are authorized by this bill. The U.S. Coordinator's mandate on the other hand is to coordinate the activities of all Federal agencies with respect to refugee affairs.

By creating this Office by statute the Committee is attempting to insure that refugee resettlement will not become diffused within the HEW structure, and that proper attention and resources will be focused on the resettlement program. In the past, staffing and funding limitations, particularly with respect to HEW regional personnel, have seriously hindered program evaluation.

According to GAO, this problem has been aggravated by "HEW reorganizations, funding delays and staff reductions." At the current time, for example, there are only 28 persons in the HEW central office—7 of whom are professional staff—responsible for administering the program. HEW regional offices are staffed with only 17 part-time refugee specialists and translator/assistants. Clearly, with the increased discretionary funding in this legislation and the large number of refugees entering the country, staffing for the administration and monitoring of this program must be augmented.

The following colloquy between Congressman Fish and HEW Secretary Califano points out the desirability of program consolidation within HEW:

> Mr. FISH. Mr. Secretary, I plan to ask you some questions about the desirability of the consolidation of domestic programs, and included in your testimony was that that is what you have decided to do.
>
> If I read it correctly, it is a single authority for domestic assistance to respond to all groups of refugees. I take it that you are going to take the Indochinese program and the Cuban program and the Soviet program and all the refugees who are not Indochinese and Cubans, and mesh the three?
>
> Secretary CALIFANO. That is what would happen under this legislation.
>
> Now they are all reporting to the Social Security Administrator for the time being. In the future, we would not like to make such distinction on the basis of whether they are Cubans, or Indochinese, or Soviet Jews. I would rather make those decisions from an operational point of view—should the cash assistance programs be under social security, and the medicaid program under medicaid.
>
> Under any circumstances, we would like to have one refugee program.
>
> Mr. FISH. You want all funds consolidated, and one authorization to be coordinated by one office?
>
> Secretary CALIFANO. Ultimately, that would be the ideal in terms of being able to plan a program and operate efficiently. (Hearings, page 231.)

Initial Resettlement

Refugee resettlement in this country has traditionally been carried out by private voluntary resettlement agencies. Each of these agencies has a contract with the Department of State under which it receives a per capita reception and placement grant, which has varied from $250 to $500. The Committee recognizes that the efforts of these agencies are vital to successful refugee resettlement. It is anticipated that the commitment to consistent resettlement funding that is embodied in this legislation will encourage the continued cooperation of these agencies.

In addition to reception and placement of the refugee (i.e. airport reception; arranging inland transportation; providing basic orientation, food, clothing and shelter; placement with the sponsor), the voluntary agencies provide a variety of follow-up services, such as counseling and referral for English language training, educational and vocational training, and advice and guidance on immigration matters.

The Committee Amendment establishes broad and flexible funding authority for the aforementioned resettlement services performed by both nonprofit voluntary resettlement agencies and public agencies. It specifically requires the Director, in allocating funds for this purpose, to take into account the different resettlement approaches and practices of the voluntary agencies. Because (1) these resettlement services are performed in the United States, (2) the Department of State has no capacity to monitor the domestic activities of the voluntary agencies (in providing services under the reception and placement grants) and (3) there is some confusion and a lack of coordination between State and local agencies and the voluntary agencies in providing certain long-term resettlement and social services, the Committee Amendment transfers this contracting authority from the Department of State to HEW. Regarding the desirability of this transfer of the reception and placement grants, the following exchange took place between Congresswoman Holtzman and HEW Secretary Califano:

> Ms. HOLTZMAN. I am talking about the grants from the State Department for the initial period of time. Should not all the grant programs be consolidated in one place, once the refugee reaches this country?
>
> Secretary CALIFANO. There is no doubt in my mind that that is the best way to do it. (Hearings, page 237.)

Nevertheless, due to concerns expressed by representatives of the American Council for Voluntary Agencies, the Committee Amendment postpones the transfer for one fiscal year. During this time, the Committee will closely monitor the activities of the Office of Refugee Resettlement and will scrutinize the joint monitoring and coordinating efforts mandated by the legislation for fiscal year 1980. This postponement will insure that there will be no disruption in the admission and resettlement of Indochinese refugees, particularly in view of the recent decision to double the flow of such refugees.

The Committee Amendment also requires the Director to develop, where appropriate, orientation, job training, language training and educational programs for refugees in overseas camps who are awaiting entry to the United States. Because of HEW's technical expertise in these areas, the Committee believes that the responsibility for program development and the authority for awarding contracts should rest with that Department. On the other hand, the language in the Committee Amendment specifically requires the Director to "make arrangements" for the implementation of these programs in the countries of first asylum. This language is intended to insure that HEW will make such "arrangements" through the Department of State and not directly with foreign governments. The Committee does not intend to authorize HEW to negotiate or consult with foreign governments on these matters. The Committee believes that any concerns that this will occur are unwarranted and it is expected that the State Department under this bill will continue to discharge its normal diplomatic functions.

Supportive Services and Training for Refugees

The Committee is convinced that the availability of a wide range of services to help refugees become self-sufficient is the cornerstone of a successful resettlement program.

Under the current IRAP program, these services have been provided through two different mechanisms—direct special project funding and reimbursement to states for social services provided in accordance with Title XX of the Social Security Act. These services include: job training, employment services, day care, career and cultural counseling, professional refresher training, family planning, transportation, English as a second language training and other supportive services. Under this combined funding mechanism $18.5 million was spent in FY 1978 and $37.7 million in FY 1979. The present method of providing services developed in an ad hoc manner which inhibited the development of an organized and accountable program which could provide all necessary services.

The Committee Amendment combines these services into a single funding channel and, at the same time, allows substantial flexibility in the delivery of such services. In essence, the Title XX-type reimbursement mechanism is eliminated in favor of a direct grant funding approach. As a result, grants can be made directly to public or private agencies or can be channelled through state governments. In either case, successful applicants would be directly accountable to the Federal Government, since grants and contracts can be awarded only to those agencies "which the Director determines can best perform the services." The Committee Amendment also authorizes health (including mental health and family planning) services where specific needs have been demonstrated.

For the first time, the aforementioned resettlement services would be made available to all refugees admitted to the United States, regardless of national origin. Because of their importance, the Committee has eliminated the Administration's proposal to limit Federal support for social services and training to a two year period after the refugee's arrival. When queried on the rationale for this limitation during the course of the hearings, Secretary Califano replied:

> [T]he restrictions in the bill for a 2 year limitation on the social services part of the program is much more a reflection of budgetary policy than it is of anything else. And there are, I suppose, stronger arguments for having a more extended period of time. (Hearing, pages 227–228.)

The Committee Amendment specifically authorizes some $200 million for these services over the next two fiscal years.

When one considers the background and skill levels of the newly arriving Indochinese refugees, the need for a comprehensive resettlement program becomes obvious. In general, they are less-educated, less-skilled, less able to speak English (some, such as the Hmong, come from a pre-literate society), and experience more medical and cultural adjustment problems than the initial arrivals from Vietnam in 1975. Witnesses before the Committee also indicated that they are more difficult to resettle than Soviet Jewish and Eastern European refugees because they lack an imigrant base in the United States and have often escaped from their country under traumatic circumstances. These needs cannot be ignored and the Committee expects that these services will be "front-ended" so that refugees can be placed on the road to self sufficiency as soon as possible after arrival here.

The Committee believes that a concerted effort to provide refugees with language training and employment-related services as quickly as possible after their arrival will enhance their economic and social self-sufficiency and reduce refugee dependence on public assistance. Concerning this issue Dr. Barry Stein, an Associate Professor at Michigan State University stated:

> The refugees' initial high motivation to recover what has been lost must be used and aided otherwise discouragement and welfare dependency may set in. I believe that greater expenditures at the beginning of a program will result in long term welfare cost savings * * *
>
> [W]e have to design programs that maximize in the first 3 or 4 years the opportunities for the refugee so that hopefully we wouldn't end up supporting them further on down the road. My own guess is that more money spent at the beginning of the resettlement process will mean less in the way of long-term costs on refugees." (Hearings, pages 211 and 217.)

Cash and Medical Assistance

At the current time, there are three different Federal programs providing some form of cash and medical assistance to refugees—each separately authorized, funded and administered. The underlying purpose of these programs is to insure that state and local governments are not adversely impacted by Federal decisions to admit refugees. Under the programs for Cuban and Indochinese refugees, Federal reimbursement is provided to the state for cash and medical assistance. The Cuban program is operated under the authority of the Migration and Refugee Assistance Act of 1962, while IRAP was established under the Indochinese Migration and Refugee Assistance Act of 1975, which carried forward most of the authorities contained in the basic 1962 Act.

Since 1961, the Federal government has expended approximately $1.4 billion on the Cuban program under the open-ended authorization of the 1962 Migration and Refugee Assistance Act. Since 1975, HEW has expended about $400 million for the domestic resettlement of Indochinese refugees. In an effort to provide greater equity in the operation of our resettlement programs, Congress, in fiscal year 1979, appropriated $28 million for domestic assistance to Soviet refugees and other refugee groups. This latter program distributes funds to nonprofit voluntary agencies on a matching grant basis. The grant covers long-term resettlement services such as language and skills training, maintenance assistance and health care to needy refugees, and employment counseling.

The Committee Amendment, in an effort to eliminate the current fragmentation and disparity in our resettlement programs, consolidates all funding authority for domestic resettlement into one basic statute. As noted earlier in the report (in the *Background* section), such consolidation was intended to be accomplished by the enactment of the Migration and Refugee Assistance Act of 1962. Regrettably, that objective was never achieved due to the emergence of unforeseen refugee situations and conflicting Committee jurisdiction regarding the overseas and domestic aspects of United States refugee programs. Hopefully, by concentrating all funds for cash and medical assistance to refugees into a single authority, this legislation will result in a coordinated and coherent resettlement program.

The need for full Federal funding for cash and medical assistance for a reasonable period of time is evidenced by our experience under IRAP. According to the latest report from HEW (Report to the Congress—Indochinese Refugee Assistance Program, December 31, 1978), the Indochinese refugee population in the United States has labor force and employment rate levels comparable to the United States population as a whole. Despite this generally positive picture, large numbers of refugees have resorted to cash assistance to supplement their wage or salary income. This has occurred because many refugees must accept low paying, entry level jobs—many of which are not commensurate with the skills and background of the refugees. HEW has indicated that as of May of this year, 40% of the Indochinese refugees were receiving cash assistance under IRAP, but that only 13% were totally dependent on cash assistance. An additional 2% of the refugees were receiving assistance under the Supplemental Security Income (SSI) program for blind, aged, and disabled persons. In light of these factors, state and local governments have urgently requested enactment of the instant legislation because the IRAP program expired on September 30, 1979.

The Committee Amendment, while combining all domestic assistance programs into one funding authorization, nevertheless preserves a great degree of flexibility in the development and implementation of programs designed to increase economic self-sufficiency. For example, cash and medical assistance may be in the form of direct reimbursement to state governments or it may be funneled through public or private agencies. In addition, the Director of the Office of Refugee Resettlement is permitted to provide such assistance through arrangements with other Federal agencies.

The Committee Amendment specifically provides that State governments (as well as other public and private agencies) may be reimbursed for up to 100 percent of their costs in providing cash or medical assistance to any refugee who has been in the United States for less than 48 months from the date of arrival of the refugee. It allows the Director to tailor programs to meet the specific needs of the refugees, and to utilize the expertise of the various resettlement agencies. For example, the resettlement program for Soviet Jews has been extremely successful. As mentioned, Federal funding for long-term services and assistance to Soviet refugees has been provided under a matching grant program and this legislation permits the continuation of this approach, as well as the development of other innovative methods to deliver interim cash and medical assistance.

HEW Secretary Califano urged that some limitation on Federal support for refugees is essential in order to encourage States and localities to work toward refugee self-sufficiency and to promote equality of treatment for United States citizens, permanent resident aliens, and refugees. The Administration proposal would have limited Federal reimbursement to a two-year period. The Committee, believing that the two-year period was unreasonable and unrealistic, adopted the 4-year limitation previously described.

The Committee Amendment also includes a one-year transitional period during which the 4-year limitation will not apply. In other words, in fiscal year 1980, the Federal Government will be authorized to provide up to 100 percent reimbursement for all refugees in the United States regardless of the date of arrival of the individual refugee. In fiscal year 1981, the four-year limitation will apply and assistance in that fiscal year and in succeeding fiscal years can be provided to a refugee only if he or she has been in the United States less than four years.

It is the Committee's position that the four-year limitation and the one-year transitional period draw a proper balance between the Federal and State responsibility to develop programs to assist refugees to become self-supporting. A longer period, in the Committee's judgment, would inhibit and discourage State efforts to absorb refugees.

In an effort to provide equitable and uniform assistance to all refugees regardless of place of birth, the Committee Amendment terminates authority for the special Cuban refugee program after fiscal year 1980.

While the language in the Committee bill authorizes full funding for all refugees during fiscal year 1980, the Committee recognizes that the conferees in considering the HEW Appropriations bill (H.R. 4389) provided funds to permit reimbursement for only 75% of the costs of the Cuban program.

The Committee Amendment also relaxes normal eligibility requirements for medical assistance for refugees in this country less than one year. Based on reports from refugee resettlement experts, additional flexibility in the provision of medical assistance will result in reduced reliance on cash assistance. One voluntary agency representative described the problem in the following testimony before the Immigration Subcommittee:

> "[I]n order to receive medicaid you really have to register for public assistance. . . . This is counterproductive. What we are trying to do is keep them out of the [welfare] system and get them as self-sufficient as quickly as possible. Therefore, we really need to devise a mechanism whereby medical care can be given without necessarily tying the individual into the total public welfare system." (Hearings, page 257.)

The legislation specifically enables refugees to qualify for such assistance without having to meet the eligibility requirements for cash assistance. In making medical assistance available independent of cash assistance, the Director is required to make a finding that the provision of such assistance will: (1) encourage economic self-sufficiency, or (2) avoid unduly burdening state and local governments.

The Committee Amendment also incorporates the present requirement that employable refugees receiving public assistance register with an appropriate employment service and accept appropriate offers of employment or training. It also expressly requires the Director to develop training programs for employable refugees receiving cash assistance. By coordinating efforts to provide cash assistance with employment-related training and services, the Committee expects to encourage refugee self-sufficiency.

Service for Refugee Children

The Committee has been concerned for some time by the inordinate delays encountered in admitting unaccompanied refugee children to this country. Large numbers of children have been languishing in overseas refugee camps for lengthy periods of time because of bureaucratic delays and legal obstacles to their admission. For example, problems of custody, guardianship and responsibility for providing services to these children have seriously hampered efforts to assist them.

Witnesses before the Committee indicated that the problem stems from the confusion between Federal and State officials as to their respective roles and the lack of dependable funding. The director of a foster care program for Indochinese refugee children, Rev. Henry K. Wohlgemuth, testified as follows:

> There has been a lot of ignorance on the part of State officials. The communication between Federal and State [governments] has sometimes broken down. That is improving within the past half-year. . . .
>
> The other problem is money. . . . But with proposed legislation with that phrase in their regarding 100 percent funding being guaranteed until the age of majority as defined in that State, that will be a boon. I have been to five different States talking with the officials as a consultant, and that has been the big issue that is always raised. (Hearings, page 144)

To address these problems, the Committee Amendment provides for full Federal reimbursement for child welfare services including foster care costs, health care costs and other services for all refugee children who enter the United States unaccompanied by their parents or other adult guardians. Such assistance will be provided until the children reach the age of eighteen or such higher age as the foster care plan of their State of residence provides. Reimbursement for child welfare services for other refugee children is authorized during the first four years after their arrival.

The bill reported by the Committee clarifies legal custody and financial responsibility issues concerning unaccompanied minors; requires States to provide for the care and supervision of unaccompanied minors; and requires the Director to compile and maintain a list of unaccompanied minors (including the names and addresses of living parents).

The Committee is hopeful that these provisions will facilitate the admission of unaccompanied refugee children and encourage state governments and voluntary resettlement agencies to expand their efforts to assist them.

The bill reported by the Committee authorizes funding for special educational services (including English language training) for refugee children in elementary and secondary schools where a demonstrated need has been shown. This legislation does not amend, replace, or disturb the program of educational assistance for refugee children authorized by the Indochina Refugee Children Assistance Act of 1976 (P.L. 94-405) and extended by the Education Amendments of 1978 (P.L. 95-561).

Reporting Requirements

The Committee Amendment sets forth a detailed congressional reporting requirement. Specifically, the Director of the Office of Refugee Resettlement is required to report semi-annually to the Committees on the Judiciary of the House and Senate. This reporting requirement reflects the Committee's concern that the resettlement program should be carefully monitored and evaluated. In the past, such monitoring and evaluation has been inadequate.

In view of the comprehensive nature of the resettlement program created by this legislation, the increased number of refugees who will enter the United States in the coming year, and the flexibility in the administration of the program, the Committee believes that semiannual reports to the Congress are necessary and appropriate.

Items to be included in the report are: updated profiles of employment data on refugees, a description of the extent to which refugees have received assistance under the legislation; a description of the geographic location of refugees; a summary of the results of the monitoring and evaluation required by the bill; a description of the activities, expenditures and policies of the Office of Refugee Resettlement, as well as the activities of states, voluntary agencies, and sponsors; a description of plans for improvement of refugee resettlement; evaluations of the extent to which the services provided under the program are assisting refugees in achieving economic self-sufficiency, improving English language ability, and securing employment commensurate with their skills and abilities; a summary of reported instances of fraud, abuse or mismanagement in the provision of services or assistance; a summary of the location and status of unaccompanied refugee children admitted to the United States; a summary and evaluation of the information supplied by refugees in conjunction with their applications to the Attorney General for adjustment of status; and a summary of waivers of grounds of exclusion under the Immigration and Nationality Act granted by the Attorney General to refugees during the reporting period.

In addition, the Secretary of HEW is required to conduct a study and report to Congress on: resettlement systems used by other countries and their applicability to the United States; the desirability of using a system other than the current welfare system for the provision of cash assistance and/or medical assistance to refugees; and alternative resettlement strategies.

The Committee is convinced that existing resettlement mechanisms, policies and procedures must be continuously reviewed and evaluated in order to determine whether improvements are needed or whether alternative approaches should be adopted. This requirement will focus the attention of the Administration on these issues, and provide the Congress with a basis upon which to evaluate the need for change.

35.

U.S. Immigration: A Policy Analysis

a Public Issues paper of
The Population Council

Charles B. Keely

2

Policy Approaches and Supporters

This policy of supplying, by opposite and rival interests, the defects of better motives might be traced through the whole system of human affairs, private as well as public.[10]

James Madison,
Federalist Paper, Number 51

The interplay of individual and group interests benefits the republican form of government by keeping the majority from violating minority rights and a minority from usurping power. It is not surprising, therefore, that an issue of great substantive and symbolic importance to the nation stirs up "opposite and rival interests."

The three most salient policy perspectives vying for the attention of legislative reformers—adjusting immigration flows to labor force requirements, controlling population growth by limiting entry, and maintaining liberal family reunion and refugee admittance goals—provide useful categories within which to analyze immigration issues. These perspectives, even though not mutually exclusive, can justify very different policy outcomes depending on the priority they are assigned.

A wide range of individuals and groups line up in support of each of these perspectives. It is not uncommon, however, to find disagreement on particular issues among those emphasizing the same perspective, or to find advocates for a measure seeking to invoke more than one justification for their position. Still, certain interests do gravitate toward one or another of these perspectives.

These perspectives, and those who advocate them with greatest force, are described to clarify the connections between justifications, goals, and specific policy measures. The necessarily sketchy presenta-

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tion of any particular group's interest or position is not intended to dismiss or discredit its broader purposes or specific stands. Rather, the intent is to provide a realistic backdrop against which to consider what, at the level of policy analysis, may appear to be equally plausible options.

Adjusting Immigration to Labor Force Requirements

The first policy perspective holds that, since most immigrants to the United States join the labor force, there should be greater consideration of the manpower impact of immigration. In fact, the Secretary of Labor, Ray Marshall, has proposed integrating employment and immigration policy. "I am particularly concerned that immigration and employment policies be closely coordinated. Obstacles to legal immigration encourage people to enter the country illegally. Since most of the people who come to the United States work, we should relate the number of legal immigrants to realistic labor market needs."[31]

"Since most of the people who come to the United States work, we should relate the number of legal immigrants to realistic labor market needs."

The most developed approach to subordinating immigration policy to manpower needs is the report on immigration prepared by David S. North and Allen LeBel for the National Commission for Manpower Policy.[32] The Commission is composed of five Cabinet Secretaries (Defense, Agriculture, Commerce, Labor, and HEW), the administrator of the Veterans Administration, and seven other members from business, labor, state government, academia, and church groups. The authors describe their position on illegal migration as "restrictionist."[33] They not only support measures to end illegal migration, an almost universal goal in this country, but also reject expansion of temporary labor programs because of their labor market impact. On legal immigration, North and LeBel suggest a specific mechanism for coordination of immigration and manpower policy:

"We recommend that the Congress give the Executive the discretion, each year, to set the immigration totals for the coming year within an arbitrary range of 300,000 to 500,000. . . . Although the Executive would announce the target early in the year, it would be free to increase it . . . but not to decrease it, as this would adversely affect persons who had made plans on the basis of the earlier announcement.

The annual total would be based on two, totally separate, calculations. The first would be the absorptive capacity of the nation, based primarily on the unemployment rate; the other consideration would be the nation's sense of responsibility for refugees and perhaps for other overseas political considerations."[34]

The Labor Department's insufficient data and resources make it nearly impossible to adjust immigration levels to regional and occupational needs.

North and LeBel thus translate the coordination concept into a specific program mechanism to gear immigration levels annually to unemployment rates. As the authors point out, however, one lesson of the labor certification program introduced in the 1965 Immigration Act is that a system to adjust immigration to the employment needs of regional labor markets and different occupations is difficult, if not impossible, given the current data bases and organizational resources of the Department of Labor and of state employment services. Further, even if employment requirements are the primary guide to immigrant selection, the presence of other accepted goals (as illustrated by North and LeBel's reference to refugee resettlement and foreign relations) can result in decisions that contradict employment goals. The recent experience of Canada is highly instructive. Canada uses a system that awards points to an applicant on the basis of family sponsorship, region of intended settlement, language abilities, and occupational needs. The goal of the system is to meet labor force needs, but the fact that an applicant can achieve the required number of points for admission, regardless of occupation, means that the desired results are not always achieved.

Toward a policy goal of family reunion the report is not as favorable. A basic premise of North and LeBel's recommendations is clearly stated: "There must be considerably more emphasis placed on the allocation of a publicly generated good, the immigrant visa, to meet the needs of society as a whole rather than those of individual members of society." Earlier they refer to "persons admitted for societal (as opposed to familial) reasons," and characterize the family reunion policies as having "an aura of nepotism." A particular target is the fifth preference of the 1965 Act: brothers and sisters of US citizens[25] (see Table 2).

As is to be expected, organized labor supports much of the stance that emphasizes employment policy. On illegal immigration, the AFL-CIO has consistently supported criminal sanctions for employers of undocumented aliens, an employment document based on the worker's Social Security number, increased border and labor law enforcement, US foreign aid geared to promoting employment in sending countries, and repeal of Tariff Code provisions that extend special customs treatment for goods produced in plants near the border and permit US companies to take advantage of low-wage workers in such operations as electronics assembly and garment work. The AFL-CIO favors amnesty for illegal migrants who entered the United States before 1970, but is ambiguous about how to treat those who entered after that date.[26]

To discourage illegal migration, organized labor consistently supports criminal sanctions for employers and increased border and labor law enforcement.

On legal migration policy, organized labor continues its strong support of the goals in the 1965 Act. The change from organized labor's earlier restrictionist stand has not diluted its strong and persistent concern for protecting the American worker. Thus, it is unwilling to give up the labor certification procedure introduced in 1965, more because of its symbolic importance in reaffirming that immigration should not harm American labor than because organized labor views it as the best mechanism to achieve that goal.

Some labor groups fear that reactions against illegal migrants will lead to laws restricting the rights of US workers, especially ethnic minorities.

Nevertheless, there is no unanimity in organized labor. The United Farm Workers, the International Ladies Garment Workers, and other union groups have supported full amnesty for illegal migrants, made efforts to organize undocumented workers, and generally opposed what they see as using illegal migrants and immigrants as scapegoats deflecting attention from labor law enforcement to improve working conditions. They also do not want illegal migration to be used as an excuse to pass laws restricting fundamental rights of workers, especially minority-group members who look or sound "foreign."

There are other supporters of coordinating immigration and manpower policy. Most notably, those who adopt the goal of population limitation ally themselves with the labor stance on the questions of illegal migration policy and on the selection procedures of a reduced legal immigrant flow. The major support is on the illegal migration question, where the goals of reduced population growth and the assumed negative labor force impacts of illegal migrants coincide. A recent pamphlet from Zero Population Growth, Inc., a citizens' organization that advocates a planned, voluntary stabilization of US and world population, presents a summary of the labor arguments:

"Illegal immigration is creating and perpetuating a subclass of workers deprived of civil and labor rights. . . . [U]ndocumented workers depress wages and working conditions in certain regions and fields of work. . . . In the Southwest, where employers openly rely upon an endless supply of low-wage workers, illegal Mexican workers compete for jobs with legally resident Mexican-Americans. . . . In other labor markets, undocumented workers compete against native ethnic minorities including U.S. Blacks. . . . Usually pay and working conditions are too poor to attract legal U.S. residents. Legal residents often can turn to welfare payments when employers offer no better option, but undocumented workers are neither permitted nor inclined to seek welfare. If these lower-level jobs were upgraded in pay, working conditions and status, many could be filled by legal workers. . . . [I]t's still highly advantageous to hire [undocumented workers]. They are valued as hard workers, and some employers can get away without paying medical insurance, sick leave, overtime wages, unemployment compensation and Social Security payments. It's difficult for a native worker to compete with a deal like that. The availability of the large pool of illegal labor undermines labor union organizing among low-skilled workers."[27]

On legal immigration, ZPG calls for "tightening criteria for the Labor Department's imported labor certification program."[28]

Many Mexican-American groups join in opposition to expanding temporary worker programs, contending that temporary workers would only compete with Mexican-Americans, especially in the Southwest. This support, however, does not generally extend to the law enforcement proposals (e.g., sanctions against employers, broader police powers for border enforcement) that are usually included in programs aimed at reducing illegal migration, mainly because of the civil liberties concern that Mexicans and other ethnic groups will feel the brunt of uneven enforcement or outright discrimination.

Controlling Population Growth

A major and continuing result of changes in social consciousness has been concern about population growth and its environmental consequences. Currently, this concern is triggering a new look at the demographic consequences of immigration.

In 1971 the Commission on Population Growth and the American Future noted with surprise that immigration accounts for about 20 percent of overall annual growth. The Commission itself was divided on the topic of immigration: some members wished to reduce immigration by 10 percent annually over five years, to half its current level; others, bolstered by a paper prepared by Ansley J. Coale of Princeton University on the impact of current immigration on achievement of a no-growth or stationary population, held that immigration at present levels could be accommodated.[29] The Commission's final report made two proposals:

> "The Commission recommends that Congress immediately consider the serious situation of illegal immigration and pass legislation which will impose civil and criminal sanctions on employers of illegal bordercrossers or aliens in an immigration status in which employment is not authorized.
>
> The Commission recommends that immigration levels not be increased and that immigration policy be reviewed periodically to reflect demographic conditions and considerations."[30]

The Commission's recommendations reflected the division on the issue. The proposals not to raise current legal levels and to impose sanctions on employers of illegal migrants spoke to the concerns of those who wanted to reduce immigration. However, the phrasing on immigration was weak. There was not majority support to decrease the authorized level, so the compromise recommendation was not to increase it. In addition, the Commission report did not go into any detail on how to implement employer sanctions or on what constituted the criteria to be used "to reflect demographic conditions and considerations."

Nevertheless, immigration had been placed on the national population agenda. Since that time, it has received increasing attention. Zero Population Growth, currently the leading population-oriented advocacy group, provides a case study of the development of immigration as a population issue.

At its Boston convention in 1973, ZPG was faced with the good news that estimates of current fertility had dipped below replacement level; a major milestone of the organization had been achieved. But below-replacement fertility rates were only a first step. Because a large portion of the population was still young, below-replacement rates would have to be maintained for some time before a no-growth population could be achieved. Thus, ZPG had an interest in the continuation of low fertility to achieve its ultimate goal.

By 1973, then, it was evident that what ZPG had thought of as its pioneering fight to reduce fertility had become conventional wisdom and practice. The organization still had important program issues, but it raised the question of adding new ones. Immigration and the environment were two of the choices presented.

The major force on immigration in ZPG was John H. Tanton, a vice president of the organization in 1973 and its president in 1975–76. Under his leadership ZPG developed an effective immigration program focusing on the demographic impact of current immigration levels. Following the Population Commission's suggestion of a phased decrease in immigration, ZPG proposed in 1976 cutting immigration by more than half to an annual average of 150,000 (calculated on a five-year total of 750,000

ZPG proposes cutting immigration levels by more than half, hoping to achieve its goal of a zero-growth population by the year 2008.

to allow for annual fluctuations). (Although not specifically mentioned by ZPG, the 150,000 annual average would be approximately offset by current estimates of emigration, so that legal international migration would make no net addition to US population growth.) Its projections calculated 150,000 net additions from immigration as an acceptable level consonant with zero growth by the year 2008, with a population totaling 243 million.[31]

ZPG also sought to end illegal migration by a combination of employer sanctions, tough border enforcement, increased labor law enforcement, and foreign aid focused on fertility control and job creation in sending countries.

Organized labor and population groups see themselves as allies in their campaigns against illegal migration.

ZPG has been joined by other population and environmental groups. The Environmental Fund, for example, has issued two reports related to immigration. The first, prepared in April 1978 by Wilson Prichett III, projected a US population of 428 million by the year 2000, almost a doubling in 25 years. He estimated that illegal immigrants and their offspring would add 163 million persons to the current population.[32] The exercise is based on questionable assumptions about the current illegal migrant stock and flows, age and sex structure, and vital rates, which are lineally extrapolated into the future.

The Fund's second report attacks current governmental handling of enforcement, the blame for which is placed on the present immigration commissioner. "Most INS [Immigration and Naturalization Service] personnel know that the numbers of illegals entering this country is dramatically increasing. They also know why: inadequate laws and Leonel J. Castillo."[33] This report gives special attention to a conflict over enforcement policy between the commissioner and the border patrol.[34]

Although the primary interests of organized labor and of population and environmental groups differ, they nevertheless see themselves as allies, especially on illegal migration.

Maintaining Family Reunion and Refugee Resettlement

A third policy approach generally supports current immigration policy on maintaining liberal family reunion and refugee resettlement goals, but seeks to revamp selection procedures for achieving these goals. Proponents of this view reject the notions that immigration is detrimental to the United States and that the current policy of limited and selective immigration is unacceptable. There is agreement on a need to overhaul refugee policy, specifically regarding adoption of the United Nations' definition of refugees in the protocol to which the United States has acceded, and the use of parole power by the Attorney General to admit refugees outside the immigration ceilings. There is also general agreement on maintenance of the family reunion and labor protection goals; however, there is no unanimity on retaining all the current mechanisms to achieve these goals—that is, keeping all the family preferences at current levels or continued reliance on labor certification procedures.

The major supporters of policy maintenance and procedural reform are immigrant and refugee aid groups, ethnic organizations, and religious groups (especially the immigrant and refugee agencies sponsored by religious organizations). Organized labor is a major supporter of parts of their program, continuing the coalition that was so important for the abolition of the quota system in the 1965 Immigration Act. Support on other issues comes from civil liberties groups, employers, and publications associated with business interests.

The core supporters of family reunion and refugee resettlement goals are the voluntary agencies that developed or expanded greatly to deal with refugee resettlement after World War II. Federations of such agencies, such as the American Council on Voluntary Agencies and the American Immigration and Citizenship Conference (a coalition of organized labor, voluntary agencies, and ethnic organizations), have consistently been involved in immigration policy and programs. These organizations and their constituent members have served as private sector watchdogs and in some cases as advocates of what they perceive as the liberal American attitude toward immigration. They style themselves the guardians of the humanitarian tradition of American immigration, emphasizing the nation's responsibilities as a pacesetter on refugee policy and the contributions of immigrants to American life. They take great pride in the repudiation of the national origins quota system in 1965. Hubert Humphrey summarized their general evaluation of the role of immigration: "The most energetic, hard-working people of each generation of Americans have been those newest to our country. So when we want to put a little more zest into America, add a little more flavor to this great Republic, give it a little more drive, just let there be a little infusion of new blood, the immigrant. He is restless, he seeks to prove himself."[35]

Supporters of family reunion and refugee resettlement style themselves guardians of the humanitarian tradition of US immigration.

By contrast, supporters of a stationary population and of coordinating immigration and labor policies see these groups as idealists, unwilling to face new realities and relying on historical sentiment to advocate continuation of inappropriate policy. They also detect unholy alliances of business interests, voluntary agencies, and ethnic organizations advocating self-serving policies that are not in the interests of society generally and of the least-protected Americans in particular.

As we have seen, three perspectives, which echo the historical ambivalence toward immigration, currently dominate efforts to reform immigration policy: matching immigration flows to domestic labor force needs; controlling population growth by limiting entry of aliens; and reforming procedures while maintaining current goals of family reunion, refugee resettlement, and protection of the labor force. In addition to public officials and interest groups who deal with immigration policy and its administration, the media have repeatedly directed public attention in recent years to immigration and refugee issues. The three perspectives provide useful categories within which to analyze the competing proposals on specific issues. To design minimally acceptable policy requires addressing and, where possible, reconciling these perspectives. The individual issues must be analyzed, one by one, and resolved into a legislative package that embodies a US immigration policy.

36.

The Migrations of Human Populations

KINGSLEY DAVIS

Ancient migrations carried man to almost every corner of the earth; modern ones are an ebb and flow that results from technological and economic inequality. The migrations of today are the largest of all

Human beings have always been migratory. Sometime between 100,000 and 400,000 years ago man's predecessor *Homo erectus* had spread from China and Java to Britain and southern Africa. Later, Neanderthal types spanned Europe, North Africa and the Near East; modern *Homo sapiens*, originating probably in Africa, reached Sarawak at least 40,000 years ago, Australia some 30,000 years ago and North and South America more than 20,000 years ago. Excluding Antarctica, Paleolithic man made his way to every major part of the globe. Except for species dependent on him, he achieved a wider distribution than any other terrestrial animal.

Since this propensity to migrate has persisted in every epoch, its explanation requires a theory independent of any particular epoch. My own view is that the abiding cause is the same trait that explains man's uniqueness in many other ways: his sociocultural mode of adaptation. As culture advanced and diversified, a profound and distinctly human stimulus to migration developed, namely technological inequality between one territorial group and another. At the same time the possibility of migration was increased by man's capacity to adjust culturally to new environments without the slow process of organic evolution.

Although the particular conditions of each epoch shaped migration, the underlying cause remained the same. Paleolithic man, for example, was a hunter and gatherer who naturally followed his prey and forage. Urging him on was the contrast between exploited territory and virgin territory. This tendency, inherent in any predatory animal, was augmented by the unique advantages his technology gave him in hunting itself and in adapting to environments into which his prey took him. With weapons and cooperation he could quickly skim the big game from an area and move on, and with fire, skins, shelters and tools he could adjust readily to the new climatic and dietary conditions he encountered. Soon, however, most areas (and eventually all of them) would be skimmed and occupied by humans. The thrill and above all the advantage of moving into an empty land would be gone; instead migration would involve confrontation between newcomers and earlier inhabitants. At that point the difference in technology between one group and another would replace the difference between exploited territory and virgin territory as the stimulus to migration. Men with superior techniques could invade and use more fully an area occupied by others.

Whatever the specific factors, the worldwide dispersion of Paleolithic man had significant consequences. By enlarging the resource base it enabled the human population to expand to a size otherwise impossible. Men remained sparse, to be sure, but they roamed everywhere. Migration also stimulated sociocultural evolution both by making environmental adjustments necessary and by diffusing innovations. Finally, since migration also involved interbreeding, it caused man, in spite of his worldwide dispersion and his adaptation to diverse environments, to remain a single species.

Offhand one might think that the coming of agriculture and animal husbandry some 10,000 to 12,000 years ago would have reduced migration by making people "sedentary." The evidence is to the contrary. Not only did some Neolithic practices, such as slash-and-burn agri-

LONE DOG'S "WINTER COUNT," a pictographic historical chart painted a century ago on the inside of a buffalo robe (*opposite page*), chronicles 71 turbulent years in the migratory life of the Yankton tribe of the Dakota, or Sioux, Indians. The chart, in which each successive year (or winter, as the Plains Indians counted) is represented by a symbol recalling some memorable event of that interval, is dominated by encounters between the Dakotas, themselves comparative newcomers to the northern Great Plains, and other westward-migrating people, both Indian and white. This particular specimen, part of the Heye Foundation collection at the Museum of the American Indian in New York, is a copy made by the Indians for their own use from the original chart by Lone Dog, the Yankton whose task it was to record the years from the winter of 1800-1801 to that of 1870-1871 (or, according to the Dakota system, from the "Crow killed 30 Sioux" winter to the "Crow war party surrounded and killed" winter). The record begins near the center of the robe and spirals outward in a counterclockwise fashion. The first symbol, for the winter of 1800-1801, consists of 30 black lines (representing the Sioux dead) arrayed in three rows of 10 lines each, the outside lines being joined. The last symbol, for the winter of 1870-1871, consists of a large circle (a fort) that encloses a number of smaller ovals (the Crow dead) and is in turn surrounded by figures representing the attacking Sioux; the short streaks radiating to and from the enclosure denote bullets and mark the first time on the Dakota charts that Indians are shown using firearms in battle. Other noteworthy events depicted include the outbreak of various diseases among the Indians (smallpox in 1801-1802, whooping cough in 1813-1814, cholera or measles in 1818-1819); the first appearance in their region of horses wearing shoes (1802-1803), of trading posts (1817-1818, 1819-1820, 1832-1833), of Spanish blankets (1853-1854) and of beef cattle from Texas (1868-1869). Celestial events recorded include a single bright meteor (1821-1822), a meteor shower (1833-1834) and an eclipse of the sun (1869-1870). The symbolism of the entire chart was interpreted by Col. Garrick Mallery in the Fourth Annual Report of the Bureau of American Ethnology (1882-1883).

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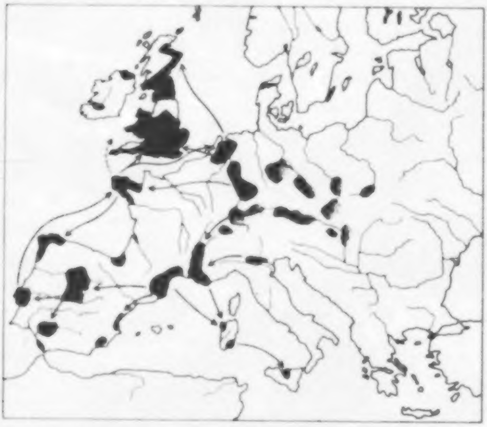
culture and nomadic pastoralism, necessitate movement through a sizable territory but also the Neolithic transition as a whole created a gulf between peoples who had made the transition and those who had not. Furthermore, the Neolithic complex did not arise fully developed anywhere, nor did it ever cease developing; rather, technological improvements in production, weaponry and transport kept appearing, and that created inequality and hence migratory potential between one territory and another. Pastoralists or shifting cultivators could evict hunters and gatherers, because hunters and gatherers required more land per man and therefore could mobilize less manpower at any one spot. For the same reason permanent cultivators could evict migratory cultivators and herders, but they might be evicted in turn by pastoralists with superior weapons and greater mobility.

Stuart Piggott of the University of Edinburgh describes the process of domestication (sheep and goats) and agriculture (barley and wheat) starting in the Near East about 11,000 years ago and gradually spreading across Europe as the climate modified. "By 2500 B.C.," he writes, "stone-using peasant economies had been established over the whole of Europe, side by side with [hunters and fishermen]." This wave of change was still in progress in Europe long after a new one had begun, starting with the smelting of copper in the Near East about 3000 B.C. The use of rare metals set afoot a perennial search for natural deposits and created routes between mines and trading centers. In Spain metalworking enclaves, apparently manned by foreigners, were established as early as 2500 B.C. The Near Eastern centers where the metals accumulated, however, became the foci of invasions by "barbarians." About 2200 B.C., according to Piggott, hundreds of sites in Palestine, Anatolia and Greece were sacked and pillaged. Among the invaders were Indo-European speakers originating somewhere northeast of the Black Sea. As Hittites they reached Anatolia by 2000 B.C., and as Aryans they reached India by 1500 B.C. They pushed into the Balkans and even into northern and central Europe.

Other migration streams moved in a west-east direction. There is the famous case of the bell-beaker potters, who, starting before 2000 B.C. from coastal settlements in Portugal, journeyed north and east, carrying not only their metallurgy in copper and gold but also their highly standardized pottery—so standardized that, as Piggott notes, "bell-beakers made in Britain or Bohemia might almost be mistaken for those of Spanish manufacture." Bell-beaker settlements were established in many parts of Europe, as far away as the River Vistula [*see illustration on this page*]. In contrast to other Europeans at the time, the bell-beaker people were round-headed and strongly built.



EXTENSIVE CHARACTER of prehistoric migrations is evident from this map, which shows the generalized distribution and movements of the bell-beaker potters, who, starting from coastal enclaves in Portugal, established settlements in many parts of Europe about 2000 B.C. Colored and gray areas on the map represent four different subgroups of bell-beaker culture. The map is based on the work of Stuart Piggott of the University of Edinburgh.

Somewhat later than in Europe people of Neolithic culture (Melanesians and Polynesians) settled the tiny islands of the vast Pacific. By the fourth century even Easter Island, the world's most isolated piece of land, some 1,200 miles from the nearest inhabitable spot, was reached. The lateness of settlement in the Pacific islands suggests that great stretches of water were the main barrier to migration. Long before those islands were settled man had reached and had traveled throughout the Americas, where he evolved new Neolithic cultures.

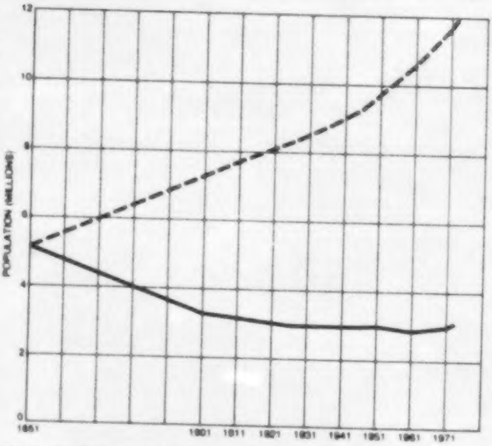
With the rise of town-based and quasi-literate civilizations new kinds of inequality between one territory and another arose, generating migration. The civilized centers operated as magnets, drawing both peasants and artisans from the immediate hinterland and barbarians from beyond. The barbarians frequently came not as peaceful newcomers but as marauders or invaders. In eastern Europe and central Asia the vast steppes evidently allowed pastoralism and an increase in population but not much agriculture. From this region nomads (the word is Greek for pasturing) began their invasions, each tribe pushing the one before it. When the tribesmen learned to ride horses, by at least 1500 B.C., their rapid movement made possible the creation of empires stretching for thousands of miles. Each wave tended eventually to become sedentary itself, a target for a fresh wave of nomadic invaders.

The list of invaders from central Asia is bewildering. Among the best-remembered are the Hittites, who reached the Anatolian plateau by 2000 B.C., were masters of iron metallurgy by 1500 B.C. and succumbed to the Phrygians and others about 1200 B.C.; the Scythians, who drove and followed the Cimmerians into central Europe and raided Egypt in 611 B.C.; the Huns, who emerged in Mongolia and from the second century B.C. were the scourge of China and moved steadily westward, reaching the Volga around A.D. 250, Gaul and Italy the following century, and stopping in 453 with the death of Attila. The Roman Empire was finally subjugated by two sets of nomadic invaders: those from eastern Europe and central Asia (Goths, Vandals, Alans, Franks and Burgundians) and those from the Arabian peninsula. The latter expanded rapidly after A.D. 630, until by 750 the Islamic world extended from Spain to the Punjab. Much of the expansion was accomplished not by Arabs, however, but by nomads from central Asia. The Seljuk Turks, forced out by the resurgent Chinese of the Sung dynasty, overran Persia, Armenia, Anatolia and Syria in the 11th century. Two centuries later Mongol tribes under Genghis Khan conquered northern China, eastern Turkestan, Afghanistan, Persia, Russia, a large part of eastern Europe, Asia Minor, Mesopotamia, Syria and finally southern China. As a result the Ottoman Turks were pushed into Asia Minor in the 14th century and then to the Balkans, culminating with the conquest of Constantinople in 1453. The Turks ruled India from the 11th to the 16th century, when the Moguls (offshoots of Genghis Khan's people) took over and ruled until the British arrived.

How much actual migration was involved in these conquests it is impossible to say, but it was clearly from sparsely settled territory to thickly settled and from less advanced societies to more advanced. If it had been the only form of movement into civilized centers, the centers could not have existed. A more normal type was the movement of peasants and artisans into the city to sell their wares or earn a wage. This, however, did not suffice. The rulers and entrepreneurs of the civilized world needed manpower under direct control, and they took it by force, mainly from the barbarian world.

"The old Sumerian ideograph for slave," the historian William Linn Westermann wrote, "means 'male of foreign land,' indicating that the source of slavery was war and its prisoners." Although slavery was not a major institution in Egypt, it was indispensable in most of the ancient world. At the time of Pericles, Athens had between 75,000 and 150,000 slaves, representing between 25 and 35 percent of the population. They were the non-Greeks who were captured wherever the Athenians were fighting. The slaves practiced nearly all occupations; a large contingent (approximately 20,000) worked in the silver mines at Laureion, and a significant number were used in handicrafts that gave the city something to trade for foodstuffs and materials from distant lands.

In Athens the free immigrants called metics, who were permanent residents rather than passing traders, may have outnumbered the slaves. Most of them were Greeks, some being rural-urban migrants in the sense familiar today. Counting them with the slaves, at least half of the population in the time of Pericles consisted of migrants.



IMPACT OF EMIGRATION on the population of Ireland since 1851 is exceptional in that Ireland was the only European country whose population declined as a result of emigration. Solid black curve shows the actual population of Ireland during this period; broken black curve shows the projected population without emigration but with the birth and death rates that actually prevailed. (It seems unlikely, however, that the actual rates would have been maintained if there had been no emigration; emigration enabled the country to keep its marital fertility higher than that of other northwestern European countries.)

Rome was even more dependent on slaves than Athens, but the number at any one time hardly measures their importance, because many were freed. Doubtless there would have been more free migrants if there had been fewer slaves. In Rome, where a single military campaign might bring in 50,000 prisoners, the influx of slaves appears to have overshadowed free migration. Tenney Frank long ago calculated from inscriptions that at least 80 percent of the population born in Imperial Rome were of slave extraction. Since the Romans, like all urban populations until recently, failed to replace themselves, the large population of Rome (perhaps a million at its zenith) was generated entirely by migration, much of it slave.

A milder form of migration, but still one controlled by the civilized centers, was colonization. Beginning before 750 B.C., the Greeks spread settlements from Spain to the eastern shore of the Black Sea. Whereas the Phoenicians, with the exception of Carthage, had founded mere trading stations, the Greeks installed full-fledged towns to serve as trading centers and to provide opportunities for poor Greek citizens. With the Athenian navy as the link, these towns remained attached to Greece and were colonies in that sense; instead of expanding territorially, however, they remained only urban outposts. When Alexander tried to settle Greeks in large territories, he failed. The Romans came closer to reaching Alexander's ideal, because they gradually Romanized entire regions of Europe, but they did so more by installing Roman institutions than by sending out Roman settlers. Although administrators and army veterans did go to the provinces, the Roman population was not large enough to supply many migrants.

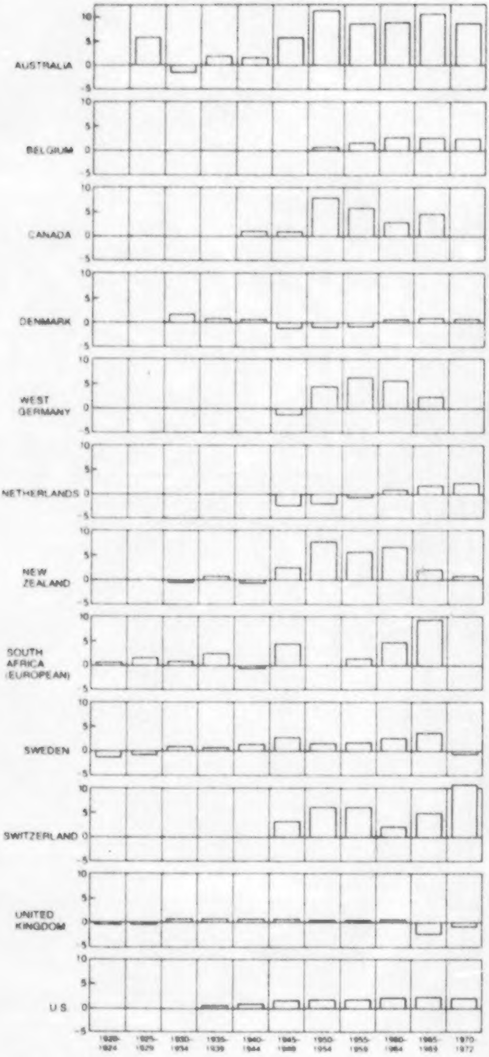
Clearly, by the close of the Roman Empire virtually all forms of migration were known. In all of them an inequality between areas led either to voluntary movement or to compulsory movement controlled by the sending or receiving area. The modern age did not so much invent new forms of migration as alter drastically the means and conditions of the old forms. The general cause was still the same: the difference between technologically advanced and less advanced. What was new was the depth of the difference, its world scope and its capacity for change.

Since Europeans initiated the technological transformation, the key to modern migration is to be found in their relation to other peoples. In the 16th and 17th centuries, for the first time, the world as a whole began to be one migratory network dominated by a single group of technologically advanced and culturally similar states. Largely as a result of the European countries' use of this network, they eventually were able to start the Industrial Revolution and thus enormously enhance their world dominance. The subsequent spread of industrialism to other parts of the world made industrialism per se, not European culture, the main basis of technological inequality.

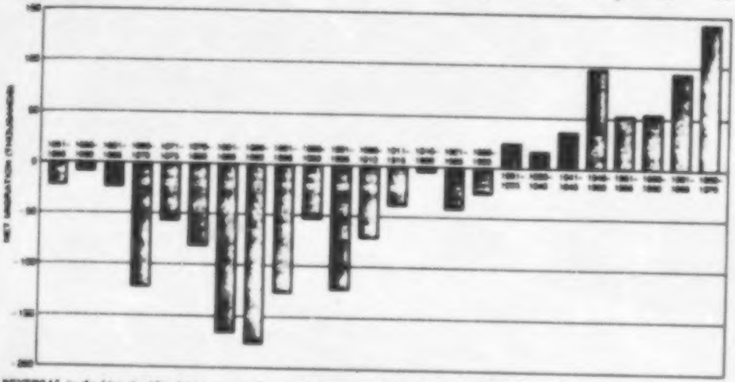
How did the Europeans, their armies, navies and economies honed by incessant warfare among themselves, deal with the world they had discovered? Their first impulse was to skim the cream, to obtain luxuries and precious metals by confiscation, all the while preventing their European rivals from doing the same, but this could not last. Soon they followed the ancient world's example by setting up trading posts and coastal fortifications, but they needed more control over indigenous production and therefore claimed entire territories. Their handling of each territory depended on its climate, accessibility and inhabitants. In these terms four types of territory can be distinguished.

The first type, inaccessible and sparsely inhabited (such as Tibet, central Africa and the eastern Andes), was left in abeyance and need not detain us. A second type, tropical or subtropical, sparsely inhabited and accessible by sea, was immediately exploited; a third type, also accessible and lightly populated but temperate, was eventually exploited; a fourth type, accessible but thickly populated, was handled more indirectly. Let us discuss the last three types.

Warm and accessible territories were of immense potential value, because their products complemented those of Europe. When sparsely peopled by ab-



NET MIGRATION RATES per 1,000 population per year are presented in the bar charts at left for 12 developed countries in the period from 1920 to 1972. The absence of bars signifies the unavailability of data.



REVERSAL in the historic tide of migration in the case of a typical European industrial country is seen clearly in this bar chart, which records net migration in and out of Sweden since the middle of the 19th century. Before 1930 Sweden was a land of emigration; since then it has been a land of immigration. Other advanced European countries have exhibited a similar migratory reversal.

regions, the land required only clearing. Hence in the region closest to Europe—the Caribbean and the Gulf of Mexico and the warm coasts of North and South America—the Europeans undertook the production of indigo, rice, cotton, spices, sugar, tobacco, coffee, tea and other tropical crops. For this they needed huge inputs of cheap labor, but Europeans themselves were too expensive and too ill-adapted to such work in a hot climate, and the original inhabitants were too few and too recalcitrant. To obtain the needed labor the European managers resorted to the same device the Greeks and Romans had used: slavery. According to estimates recently evaluated and summarized by the historian Philip D. Curtin, 9.6 million slaves were imported into slave-using areas between 1451 and 1870. Since mortality during the voyage was great—normally 10 to 25 percent for slaves—the total number enslaved probably exceeded 11 million, virtually all from Africa. In distance and number this movement transcended any other slave migration in history.

When slavery was abolished in the British Empire in 1833, the British, who controlled a large share of the world's tropical lands, substituted indentured labor, and the Dutch did the same. Instead of coming from Africa, however, indentured plantation labor came overwhelmingly from densely settled areas such as southern China, Java and India, which not only were closer to new zones of plantation agriculture in Malaya, Sumatra, Burma, Ceylon and Fiji but also were societies in which thousands of illiterate and landless workers could be induced to risk their fate in unknown places. Usually the indentured contract guaranteed the return fare after three to five years of service, but plantation managers often escaped this clause by paying a bonus for reenlistment. Migrants coming under a short-term *kangani* agreement (group recruitment under a leader, a form used for areas near the place of origin) were normally free to leave employment after a month if they paid back the cost of their journey. In some cases labor recruitment, ostensibly by contract, was achieved by force. In the latter half of the 19th century the practice of kidnapping Melanesians to work in Queensland and Fiji was notorious under the name of "blackbirding," and the impressment of Chinese coolies for naval duty gave rise to the verb "shanghai." Abusive or not, the contract system fueled plantation agriculture in tropical areas around the world. I have estimated that 16.8 million Indians left India, of whom 4.4 million stayed away permanently. It seems probable that several million Chinese left China and hundreds of thousands left Java. Although the coolie migration was historically brief, its total volume probably exceeded that of slave migration.

The third type of region, usually tropical but in any case densely settled and civilized (such as China, India, Java and Japan), fell either under the direct control of Europeans or under their indirect influence. When the Europeans did gain control, they tended to set up estate agriculture in less populated areas, causing currents of internal migration similar to the international movement of contract labor. Europeans themselves did not migrate to these countries in any number, because they could not compete with the natives except as managers and officials, and not many of these were needed. The maximum number of Europeans ever in India was about 200,000 in 1911, representing one European for every 1,515 Indians. The centers of population in Asia were major exporters of people, not importers.

It was the fourth type of area, Temperate Zone lands with sparse and backward native populations, that attracted European migrants. These regions, comprising about a fourth of the earth's habitable area, were suited to European technology and temperament and offered an unparalleled opportunity for settlement. At first, however, Europeans showed amazingly little interest. Spain and Portugal, the earliest colonial powers, deliberately discouraged permanent migration. The Dutch and the French sent out few settlers. The trouble was that Europe's population was growing slowly and few people were so poor or so persecuted that they wanted to transfer to a wild area to live under subsistence conditions and battle savages. Such places were good for soldiers, criminals, adventurers and derelicts but not for ordinary citizens. For three centuries only a trickle of Europeans settled in these territories, and once there they clung to the coasts where contact with Europe could be maintained. Since the original inhabitants were decimated by even slight contact, the total population of the Temperate Zone colonies grew slowly, more by the natural increase of the Europeans already there than by further immigration. By 1800, almost 200 years after the founding of the first permanent colony at Jamestown, the white population of the U.S. was only 4.3 million. As late as 1840, 52 years after the start of the first penal colony in Sydney, there were only 190,000 Europeans in Australia and 2,000 in New Zealand. Similarly, Canada, Argentina, Chile and South Africa all had few white people in the early 19th century.

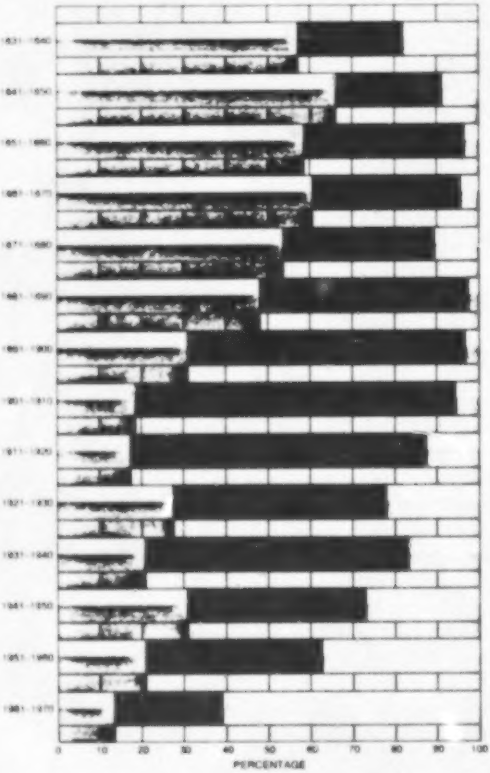
Only with the introduction of a new and greater technological gap produced by the Industrial Revolution did European emigration take off. Although the continent was already crowded, the death rate began to drop and the population began to expand rapidly. Simultaneously urbanization, new occupations, financial panics and unrestrained competition gave rise to status instability on a scale never known before. Many a bruised or disappointed European was ready to seek his fortune abroad, particularly since the new lands, tamed by the pioneers, no longer seemed wild and remote but rather like paradises where one could own land and start a new life. The invention of the steamship (the first one crossed the Atlantic in 1827) made the decision less irrevocable.

Little wonder that the great period of voluntary overseas European migration was from 1840 to 1930, and that the mania moved across Europe along with industrialism. At least 52 million people emigrated during that period. This equaled a fifth of the population of Europe at the start and exceeded the number of Europeans already abroad after more than three centuries of settlement.

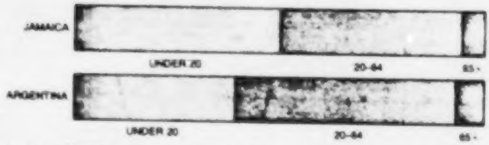
The prime destination was the nearest Temperate Zone land, North America, but the wave spilled over to Australia, southern South America, southern Africa and central Asia. The movement fed on itself, not only because the migrants wrote back to friends and relatives but also because the new lands underwent rapid development. They turned out crops and products that competed with those of Europe, worsening the plight of many Europeans and improving the prospects for migrants. By World War I, 85 years after the big wave had started, the New World countries already rivaled northwestern Europe economically.

The new lands were so vast that not all parts could be settled simultaneously. In Russia settlement began beyond the Urals, but elsewhere it hit the seacoasts first and worked its way inland. The moving frontier became a part of life and folklore.

What were the consequences of the migrations of slaves, indentured laborers and free migrants in the four centuries preceding the Great Depression? One was a steep rise in world population



CHANGING COMPOSITION OF IMMIGRANTS to the U.S. is evident in these bars, which break down the immigration totals for each decade from the 1830's through the 1960's according to whether the area of origin was northwestern Europe (*dark color*), the rest of Europe (*gray*) or the rest of the world except Canada (*light color*). The bars reflect how eastern and southern Europe gradually replaced northwestern Europe as the main source of immigration to the U.S. and how these regions were in turn displaced by Latin America and Asia. (Immigrants from Canada are omitted from the chart because a substantial number of them were not originally Canadians but recent migrants to that country.)



AGE STRUCTURE of a typical country of emigration (Jamaica) is contrasted with that of a typical country of immigration (Argentina). Migrants tend to be in the middle age range.

growth after 1750, because in the regions of origin (except in Ireland) the emigrations did little to damp population increase, whereas in the regions of destination, after initial setbacks, they greatly stimulated it. The sending areas, by the standards of the time, were densely settled. Emigration therefore enabled them to postpone an inevitable change in birth or death rates. Comparative data show that in Europe the countries with the highest rates of emigration postponed longest the reduction in their birth rate. France, with little emigration, had the lowest birth rate; Ireland and Italy, with much emigration, had high birth rates. Ireland was the only country whose population declined; if it had had no migration but had exhibited the birth and death rates that actually existed, its population today would be nearly 12 million instead of about three million [see illustration on page 55]. In Europe as a whole emigration did little to hold down population growth; the population rose from 194 million in 1840 to 483 million in 1930—about double the rate for the world as a whole. Emigration had even less effect in Asia and Africa.

In contrast, in the areas of destination the effect was electric. Even the primitive peoples after initial decimation generally made a strong comeback, and the descendants of African, Asian and European immigrants multiplied so fast that they were widely cited as being an illustration of the biological maximum of human increase. The reason for the growth was that entire new continents were being transformed overnight from stone-age technology to modern technology. This was a much greater transition than what was happening in Europe itself; in fact, it was the most fantastic jump in cultural evolution ever known, and it took the lid off population growth. Between 1750 and 1930 the population of the main areas of destination increased 14 times, while the rest of the world increased only 2.5 times.

Another consequence of the migrations was a geographic redistribution of the world's population. In 1750 the new regions, which accounted for half of the world's land area, held fewer than 3 percent of its people; by 1930 they held 16 percent.

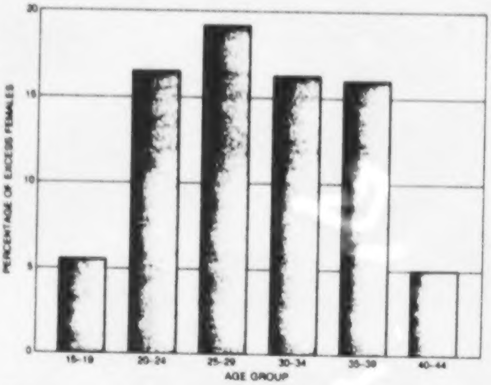
At the same time the world's racial balance was altered. Certain groups became extinct, others disappeared by hybridization and still others made great gains. Caucasians increased 5.4 times between 1750 and 1930, Asians 2.3 times and blacks less than two times.

Even more dramatic was the geographic displacement of races. By 1930 approximately a third of all Caucasians (and by 1970 more than half) did not live in Europe and more than a fifth of all blacks did not live in Africa. If all Europeans had stayed in Europe and had had the same natural increase that Europeans exhibited everywhere, there would have been 1.08 billion people in Europe in 1970 instead of 650 million. The earliest immigrants exercised a disproportionate influence on subsequent racial distribution because their natural increase lasted longer than that of later immigrants. Although the immigration of blacks into the U.S. was minuscule after 1850 compared with European immigration, they almost held their own by sheer excess of births over deaths. Blacks represented 15.7 percent of the American population in 1850 and 11.1 percent by 1970.

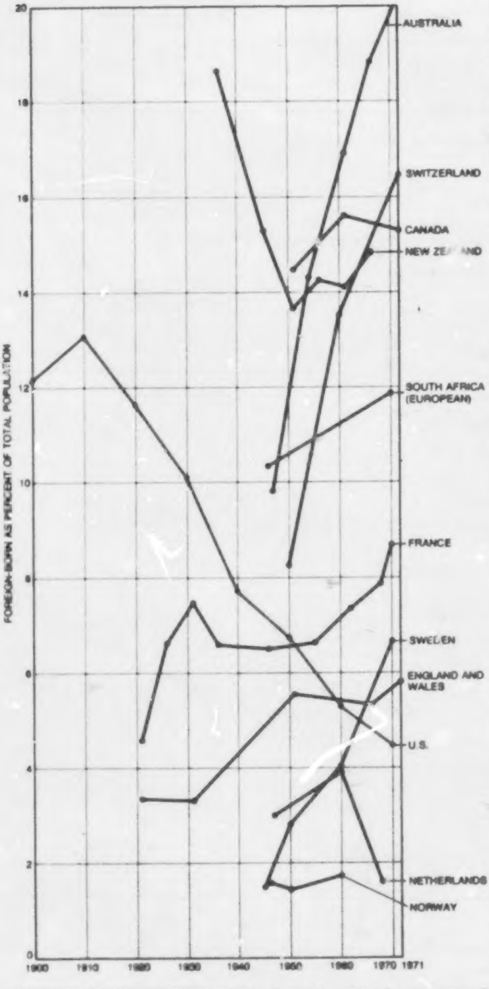
Although most of the migrations involved no drastic shift in climate, some of them did. In the U.S. there are now 11 million blacks outside the South and 50 million whites (mostly northwestern Europeans) in the South. In Queensland in Australia there are about 1.7 million whites and in sultry Panama about half a million.

As a result of the displacement and mixing of races there are more racial problems in the world today than at any time in the past. In nearly all immigrant countries, in the Americas, Southeast Asia and southern Africa, race is one of the most important bases of political division. In some countries particular hybrids have become separate groups, for example the "Coloureds" who comprise 9.4 percent of the population of South Africa and the "Creoles" who make up 35 percent of the population of Surinam. Among immigrant countries Australia has been most effective in excluding racial minorities. Australia's freedom from racial strife compares with that of Sweden or Denmark.

It is often thought that with two world wars, a Great Depression and restrictive



SEX RATIO in a country of emigration such as Jamaica also tends to be unbalanced, since men (particularly young men) participate in international migration more than women.



FOREIGN-BORN POPULATIONS of a selection of countries are plotted as a percentage of each country's total population. In most developed countries proportion has been rising, and in some of older industrial countries of Europe it now exceeds proportion in U.S.

legislation the volume of international migration has declined. This illusion appears to be born of the preoccupation with free migration from Europe to the New World. In 1942 an Australian, W. D. Forsyth, pointed out in *The Myth of Open Spaces* that desirable lands sparsely occupied by primitives no longer existed, that Europe's population had virtually ceased to grow and that therefore the traditional flow of migration from the Old World to the New World was over. He was right, but he did not foresee the magnitude of two developments then already under way: the rebirth of forced migration in the world and a massive reversal of migration between the developed countries and the underdeveloped ones.

To understand these two developments one must recall the principle that migration is generated by significant differences between one area and another. In the 20th century some of these differences have been political and ethnic. Two world wars ignited by a nation obsessed with the separateness and solidarity of its own folk were ironically ended by a legitimation of that obsession for nations in general. Under the Wilsonian banner of "national self-determination" it was all peoples, not only the Germans, who could claim folk sovereignty. Carried to its extreme, this ideal, which justified the dismemberment of the defeated German, Turkish and Austro-Hungarian empires, encouraged every minority to seek a territory of its own and every colony to seek "independence." In a world where most states had minorities and many had colonies the result was to frighten them into seeking ethnic purity and to release former colonial areas. Between 1900 and 1970 independent nations multiplied 2.5 times, from 56 to 142. The combination of political independence and economic weakness made the greatly expanded phalanx of underdeveloped states receptive to systems of government that promised shortcuts to Utopia in exchange for political freedom. The wars, revolutions and ideological struggles that accompanied these changes not only uprooted people against their will but also made migration a political instrument. Unlike slavery or kidnapping, the force was usually applied by the sending region rather than the receiving one, and in the name of ethnic purity or ideological correctness rather than personal gain.

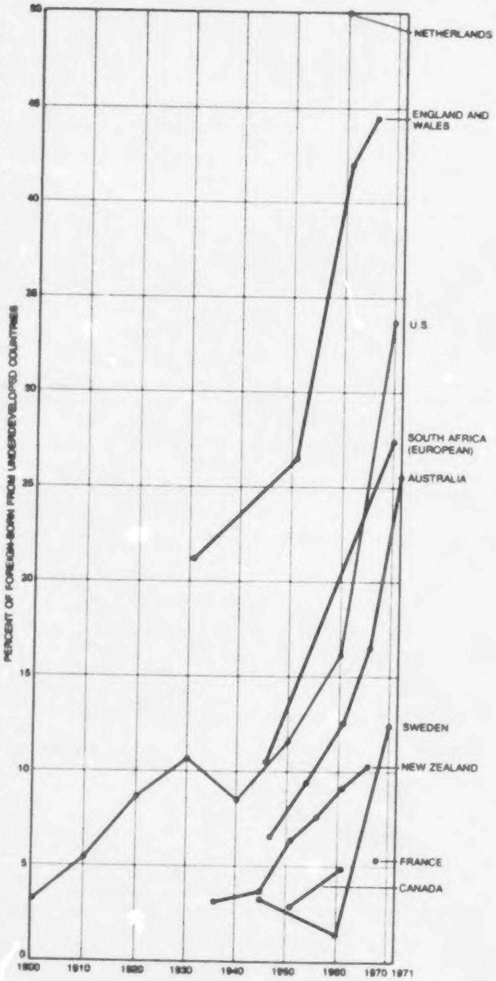
Ethnic purity was easiest to attain when two countries had minorities that "belonged" to each other and could therefore be "exchanged." Thus the

Treaty of Neuilly (1919) sanctioned an exchange of some 46,000 Greeks for about 120,000 Bulgarians; the Treaty of Lausanne (1923) provided for the transfer of 190,000 Greeks from Turkey to Greece and 388,000 Muslims from Greece to Turkey. In 1945 and 1946 population-exchange agreements were made between Czechoslovakia and the U.S.S.R. and between Hungary and Yugoslavia. Some of the exchanges were more like panics and less like trades than the treaties imply. In the Czechoslovak-Russian exchanges migration was virtually all one way—out of the U.S.S.R.

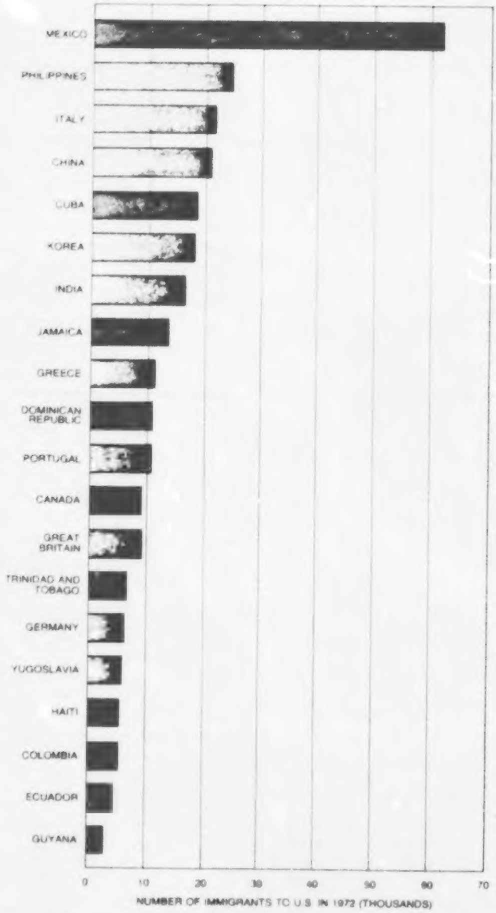
Cases of exchangeable minorities are rare, however, because many minorities have no state to which they belong, and when they do, they are seldom paired there with a reciprocal minority. Minorities were more often expelled than exchanged. After World War II some 2.7 million Sudeten Germans were transferred to Germany and 415,000 Karelian Finns were moved to Finland. Even if a group had nowhere to go, it might still be expelled or forced to flee, as were 200,000 Armenians who survived Turkish massacres, a million White Russians, 2.5 million Chinese and 200,000 Hungarians.

In the effort to provide a separate territory for each ethnic or ideological camp, nations have been carved up, as in the partition of India, Korea, Vietnam and Palestine, often creating two minority problems where one existed before, but in any case setting in motion a forced migration. Following the partition of India some 15 million people survived the flight to or from Pakistan, yet there are still Muslims in India and Hindus in Pakistan. A difficult minority problem was created in Palestine by legal and illegal immigration of Jews from other countries where, in nearly all cases, a Jewish minority remained. In 1946 there were approximately 650,000 Jews and 1,044,000 Arabs in Palestine. In the war following the proclamation of the state of Israel in 1948, more than 500,000 Arabs fled, leaving an Arab minority of almost 200,000 in the four-fifths of Palestine that became Israel. After the "six-day war" in 1967 the entire territory controlled by Israel contained about 2.4 million Jews and more than a million Arabs. The original Palestinian refugees and their descendants, now approaching a million, were scattered as minorities in several surrounding countries.

The noted authority on European migration Eugene Kulischer compiled a table of population displacements in Europe from World War II to 1948. Omit-



FOREIGN-BORN FROM UNDERDEVELOPED COUNTRIES make up an increasing proportion of the total foreign-born populations of most developed countries, as this graph demonstrates. The U.S. totals for 1940 and 1950 count white foreign-born population only.



SOURCES OF CURRENT IMMIGRATION TO U.S. are ranked here in descending order, with the top 10 countries of origin in the Western Hemisphere in black and the top 10 in the Eastern Hemisphere in color. The figures for each country in the Western Hemisphere (except for Cuba) represent the number of visas issued in fiscal year 1972; the figure for Cuba includes 16,300 "adjustments of status" granted by the Immigration and Naturalization Service to aliens subject to numerical limitations. The figures for the Eastern Hemisphere represent the number of visas issued in fiscal year 1972 (excluding recaptured visas) together with the number of adjustments of status and conditional entries granted to aliens subject to numerical limitation. Chart is based on 1973 data from U.S. Department of State.

ting internal displacements, some of which were enormous, the total comes to 18.3 million. For the periods from 1913 to World War II and from 1948 to 1968 I have tallied exchanges and refugee movements totaling 28.7 million. If we add similar displacements in Asia, Africa and the Western Hemisphere, the grand total for the world during the period from 1913 to 1968 comes to 71.1 million. This number of migrants is considerably higher than the estimated 52 million who left Europe of their own free will in the heyday of the transatlantic movement from 1840 to 1930, in spite of the fact that the period is shorter (55 years compared with 90).

Clearly the amount of forced migration since 1913 belies predictions that world migration would diminish. But what about free migration? The answer is that it has not diminished either, but it has changed direction. Instead of flowing from the crowded industrial countries of Europe to open spaces in the New World, it has gradually shifted until it is now flowing toward developed countries everywhere. The nations of northwestern and central Europe, exporters of people for so long, are now net importers. The New World industrial countries, still relatively uncrowded, receive professional and highly qualified immigrants from industrial Europe, but increasingly their migration is from less developed countries in southern and eastern Europe, Asia, Latin America and Africa.

Evidence of the surge into developed nations is abundant. Four New World countries—Australia, Canada, New Zealand and the U.S.—received a net total of 13.9 million migrants between World War II and 1972. The U.S. alone, still admitting more foreigners than any other nation in the world, received 9.2 million during that period. More surprising is the tide of migrants into industrial Europe; for example, Sweden, for centuries a country of emigration, became a country of immigration after 1930 [*see illustration on page 57*]. Other advanced countries in Europe have shown a similar reversal, some more sharply than Sweden. Data on seven such countries, including Sweden, reveal a net migration of 6.3 million between 1950 and 1972. Adding this figure to the one for the four New World countries gives a total of 20.2 million net migrants to 11 industrial countries during the period.

What explains the reversed migration into industrial Europe and the continued migration into New World industrial nations? In my view the driving force is the widening technological and demographic gap between the developed nations and the underdeveloped three-fourths of the world. The gap differs in several important respects from the former differences between Europe and the rest of the world. First, the developed nations are now scattered over the entire world instead of being concentrated in Europe. Second, the underdeveloped countries are no longer overwhelmingly colonies but rather are independent nations. Third, the technological gap has widened in absolute terms while commercial and intellectual communication has drawn the two classes of nations closer together. Fourth, the demographic contrast between the two groups has been reversed. Formerly the technologically advanced nations had the most rapid population growth; now it is the technologically backward nations, and their rates of growth are without precedent. The population of the 178 countries I classify as underdeveloped in 1950 increased by 1.04 billion from 1950 to 1972, while the population of the 47 developed countries increased by only 200 million. Originally more sparsely populated, the underdeveloped countries as a whole were already more densely settled than the developed ones in 1950. Their comparative density was still greater by 1970: 36.3 persons per square kilometer compared with 17.2 in the developed countries.

As a consequence of the gap as it is now constituted the advanced countries have on the average more resources per person, more workers in relation to dependents, more capital generated from savings and more investment and trade. They therefore have more jobs and offer higher wages. Their native populations have become so educated, comfortable and upwardly mobile that in times of labor shortage they refuse to fill low-paying, low-status or disagreeable jobs. Millions of workers in the bulging underdeveloped countries are eager to take those jobs, and employers are anxious to hire them. Hence legally or illegally the migrants come, their transit facilitated by modern means of travel and communication and even by government and international assistance.

The dichotomy between developed and underdeveloped is, of course, arbitrary. Special geographic and political circumstances aside, the general principle is that a nation tends to gain migrants from countries less developed than itself and to send migrants to countries more developed. When an underdeveloped nation is close to a developed one (as Mexico is to the U.S. or Greece is to Germany) or has special ties with a developed one (as Britain's ex-colonies have with her), the migratory pressure is very strong. In the U.S. the 1970 census counted 4.53 million people of Mexican origin, more than the number from the rest of Latin America combined but equivalent to only two years of current population increase in Mexico. In Germany the number of foreign workers, 167,000 in 1959, rose to 2,345,000 in 1973, 82 percent of whom came from six countries (Greece, Italy, Portugal, Spain, Turkey and Yugoslavia).

That the immigrant stream is being increasingly drawn from underdeveloped countries is easy to see. In the U.S. the current shifted from northwestern and central Europe to southeastern Europe, and then to Asia and Latin America. In European countries Africa and Asia are playing an increasing role in immigration.

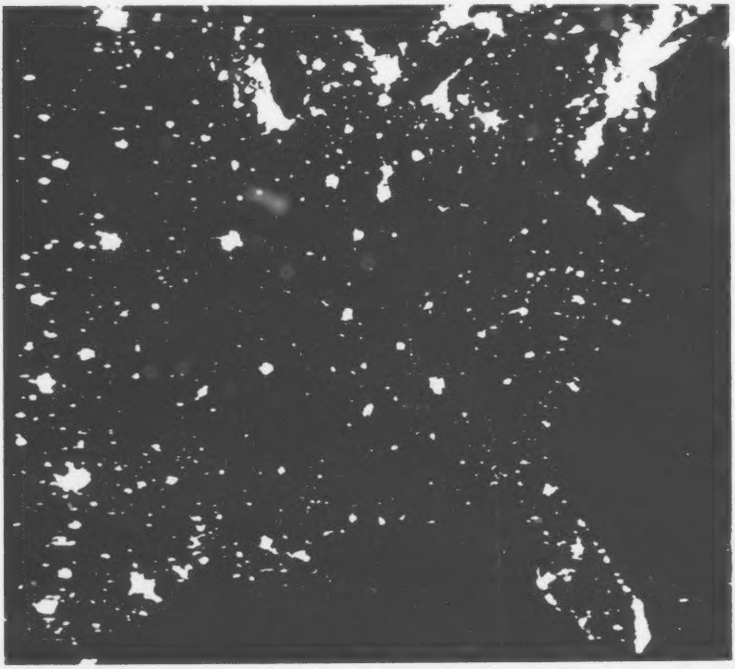
What are the effects of this new free migration? Let us look first at the receiving nations. A few of these are "churners," nations in which immigration and emigration are nearly balanced, leaving only a small net migration. In their case the main effect is not on the population's growth but rather on its composition. Since the immigrants increasingly come from the underdeveloped countries and the natives go to the developed ones, the churners are on the whole taking in untrained people at the bottom of the social hierarchy and sending out trained people at the top. Britain provides an example. Since 1930 she has had a small net intake but large movements in and out. The inward migration has given the country a large foreign-born population (2.5 million in England and Wales by 1966, representing 5.4 percent of the total population). The outward movement has in turn caused a comparable loss of natives: about 3.1 million people born in Britain now live elsewhere. More than a million of the foreign-born are from Africa, Asia and the Caribbean. Although some of them are well educated, the majority are not. On the other hand, 97 percent of Britain's exiles live in five advanced countries: Australia, Canada, New Zealand, South Africa and the U.S. They are mainly well qualified. Evidently Britain is importing relatively unskilled foreigners from the underdeveloped world and sending out her own professional and skilled citizens to more prosperous nations. To a lesser extent the Netherlands is doing the same.

The most prosperous countries are the ones that have the largest net immigration. The influx not only gives them a large foreign population but also adds to their population growth. The growth comes in two ways: directly as a result of the net migration itself and indirectly as a result of the immigrants' natural increase after they arrive. The indirect effect is greater the longer the period of time under consideration is. (The entire population of the U.S. is the result of immigration at some time in the past.) For a period less than a generation the indirect effect is a function of the migrants' fertility and age-sex structure. Normally, since young adults are more numerous among immigrants than among natives, their crude birth rate is higher. On the other hand, international migration ordinarily includes more males than females, thus depressing the crude birth rate. In recent years this rule has not held for the U.S., but in the receiving countries of Europe contemporary free migration, often called "labor migration," is largely composed of young males. In West Germany in 1970–1972, for example, foreign workers were 71 percent male. Finally, the indirect effect of immigration on population growth depends on the fertility of the immigrant women. Insofar as they come from underdeveloped countries, their fertility is high compared with that of native women. In the U.S. in 1970 the number of children ever born to women aged 40 to 44 was 4.4 per woman for those of Mexican origin and 2.9 for all women. In Sweden the fertility of foreign women in 1970 was 28.3 percent higher, age for age, than that of native women. An approximate calculation indicates that about 42 percent of Sweden's increase in population (1.04 million) between 1950 and 1970 was contributed by net immigration: 33 percent by the entry of immigrants themselves and 9 percent by their natural increase during the period. Hence direct immigration accounts for a large share of the growth of the major industrial nations.

Where the economy is concerned net immigration should have a stimulating effect because it adds more workers than dependents, but this benefit is more or less canceled by several factors, including the lower average skills of immigrant workers compared with those of native workers. Since it is the sheer availability of jobs (jobs unacceptable to native workers) rather than wages or conditions that attracts workers from underdeveloped countries, the question is: What would happen if immigrants did not come? One possibility is that certain jobs would be eliminated, jobs too unproductive to justify making them attractive to native labor. More immigrant workers come to the U.S. as live-in maids than as anything else; it would be no great loss to the economy if this category of employment were reduced. Other jobs characteristic of immigrants would be improved with respect to wages and conditions to make them attractive to natives. In other words, immigration enables employers to fill unproductive jobs or to forgo capital improvements, thus slowing the rate of technological progress. These effects are minimized but not eliminated by countries that select their immigrants carefully, such as Australia. For example, a large immigration of physicians and other professionals from underdeveloped countries not only deprives natives of opportunities for upward mobility but also allows inadequacies in the system of professional training to persist.

The assertion that natives will not take the jobs that immigrants fill is curious in view of the considerable unemployment in the industrial countries. Comparisons are misleading because of unstandardized definitions, but unemployment appears to have been rising. It is particularly high in precisely those groups—the least skilled, youths just entering the labor market and poorly educated minorities—that most directly compete with immigrants. In addition, if the industrial countries actually have a labor shortage, there is a reserve labor force that could be tapped to a much greater extent, namely women. In view of the low birth rates prevailing since the late 1960's, there would seem little hindrance to using this reserve and obtaining workers more competent than those from the underdeveloped countries.

Even if the labor shortage is real, immigration is a clumsy way of meeting it. Labor shortages come and go, but whether the migrant workers intend to stay or not, their move is often permanent. Moreover, immigrants do not stay in their first occupation. It is estimated that 57 percent of immigrants certified for a job on entering the U.S. change occupations within two years. Thus extremely short-run problems in labor supply are met by means that incur long-run population growth, the effect of which is to reduce the ratio of resources to people and to make the industrial level of living



EXTREME URBANIZATION of the eastern half of the U.S. is evident in this night infrared photograph made recently by an Air Force weather satellite. The patterns of heat concentration recorded by the infrared film reflect the distribution of population.

still more dependent on draining the rest of the world. There is also the difficulty of assimilation. Immigrants give rise to school problems, health risks, welfare burdens, race prejudice, religious conflicts and linguistic differences.

So dubious are the advantages of immigration that one wonders why the governments of industrial nations favor it. Why do they use such devices as advance job placement, housing aid, bilateral agreements on visas and work permits, and (in countries of origin) official propaganda, recruiting offices and preparatory training programs? Strictly speaking, except where former colonies are involved, *their* efforts are not directed to the most backward countries but to quasi-developed ones. Still, why invite immigrants at all?

One will find few clarifications, but official statements hint that the goals are to fill essential jobs and to stimulate population growth. One suspects that the actual causes are government inertia and pressure by employers to obtain cheap labor. Given strong employer demand and a limitless supply of job-hungry people in the underdeveloped countries, migration will occur whether it is encouraged or not. To stop it requires a great effort; to permit it requires none. Estimates of all illegal aliens in the U.S. run as high as two million. The tendency to reward illegal entry is illustrated by the announcement in San Francisco on June 4 of this year that the immigration service had resumed its "confession" program. According to the *San Francisco Chronicle*, "aliens who gained entry illegally may confess and have their status adjusted to permanent residency." "Have no fear," the immigration official reportedly said, "we are not out to deport anyone."

Special interests favoring immigration seem better able to influence the government than those opposing it. In a 1951 poll in France 93 percent of the respondents said there were enough foreigners in France. Nevertheless, the French government thereafter pursued one of the most active proimmigration policies in Europe, increasing the proportion of foreign-born from 6.5 percent to 8.7 percent by 1970. Polls in 1965 and 1971 still found the public more than 90 percent opposed to immigration, but French officials were evidently not listening. The respondents in 1971 felt that immigrants from countries closest to France adjust best to French life, yet in 1970–1971, as nearly as can be determined from French data, the government admitted at least 200,000 people from groups considered as being the least assimilable. In Germany 51 percent of those polled in 1965 opposed bringing foreign workers into the country and only 27 percent favored it. Most of those opposed (30 percent) mentioned difficulty of employment as the reason. In Switzerland in 1965, 47 percent of native Swiss employees said they would be willing to work overtime in order to decrease the number of foreign workers in Switzerland. Shortly after some 200,000 Cuban refugees were admitted to the U.S. a poll in Minnesota found 51 percent opposed to admitting them and only 36 percent favorable. In Britain, after a Labor government earlier than the current one had come to power, a poll asked what matters the respondents would like to see the government concentrate on. The third most frequently mentioned item on a list of 13 was "Keep strict controls on immigration." Governments in Europe's industrial countries are now having second thoughts about immigration; although free movement is a basic principle of economic union, it seems likely that the recent volume will be reduced.

Contemporary migration has drawbacks for the sending countries as well as the receiving ones. They derive chiefly from the fact that migration is inevitably selective. Although the quality of migrants may be lower on the average than that of natives in the developed countries, it is higher than that of natives in the underdeveloped nations. Since the developed countries cannot admit all who wish to come, they can pick and choose as the interests of their employers dictate. This means that the underdeveloped country does not simply lose untrained manpower but often loses trained manpower that is scarce and costly to produce. In the U.S. in 1972, of the immigrants admitted who had an occupation 31.1 percent were classified as "professional, technical and kindred workers," compared with only 14 percent in this category in the U.S. labor force. In 1971 there were 8,919 medical degrees conferred in the U.S.; in the same year 5,748 immigrant physicians were admitted and in the next year 7,143 were admitted. At the same time many thousands of American youths failed to gain admission to medical school. Even when, by the standards of the receiving country, the foreign workers are relatively unskilled, they are often on the average better trained than the ones who do not move. In any case emigration removes people of productive age and leaves children and old people, thereby raising the underdeveloped country's already high dependency ratio. The value of remittances sent back home may partly compensate for those losses, but the remittances are uncertain and subject to stoppage or control in times of crisis. Indeed, migration itself may be cut off and migrants may be returned precisely when the sending country is in its worst condition. How ominous that prospect can be is suggested by the fact that in Germany alone the number of Greek workers is equivalent to 8.4 percent of Greece's entire labor force and the number of Portuguese workers is equivalent to 4.7 percent of Portugal's labor force.

For the underdeveloped country emigration appears to be a stopgap allowing postponement of internal economic and demographic changes that would make emigration unnecessary. It is like borrowing money at high interest to pay off debts that one's income could not support in the first place. As the underdeveloped countries become still more crowded, there will be increasing pressure for greater admission to developed countries, on humanitarian grounds if for no other reason. By and large, however, the problems of underdeveloped countries are beyond solution by emigration. If developed nations tried to accept as migrants the excess population growth of the underdeveloped ones, they would currently have to receive about 53 million immigrants per year. This would give them a population growth of 5.2 percent per year, which added to their own natural increase of 1.1 percent per year would double their population every 11 years.

In the future the failure of international migration to solve problems will not necessarily prevent its happening. The present wave of voluntary movement from underdeveloped nations to developed ones may reach a maximum and be reduced, but if so, it will be replaced by other waves. Although particular migratory streams are temporary, migratory pressure is perpetual because it is inherent in technological inequality. In the past migration has helped to fill the world with people. That the world is now full is a new condition that complicates prediction. Another new condition is the degree to which nations can, if they wish, control their borders. Nations strong enough to prevent voluntary migration, however, are also strong enough to engender forced migration. Whether migration is controlled by those who send, by those who go or by those who receive, it mirrors the world as it is at the time.

37.

The Need to Modernize Our Immigration Laws

CHARLES GORDON*

INTRODUCTION

During its first hundred years the United States imposed no restrictions on immigration. Some federal legislation sought to encourage immigration[1] and to improve conditions on ships bringing immigrants.[2] The national policy during this period was to allow the unrestricted entry of immigrants.[3] Even so, the influx of immigrants was not universally favored. Some states sought to impose

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* Practicing attorney, Washington, D.C. Formerly General Counsel, Immigration and Naturalization Service. Coauthor of C. GORDON & H. ROSENFIELD, IMMIGRATION LAW AND PROCEDURE (1954). Adjunct Professor of Law, Georgetown University Law Center and University of San Diego Law School (Summer Session, Guadalajara).

[1] Act of July 4, 1864, ch. 246, 13 Stat. 385 (repealed by Act of March 30, 1868, ch. 38, § 4, 15 Stat. 58).

[2] Act of March 3, 1855, ch. 213, 10 Stat. 715; Act of May 17, 1848, ch. 49, 9 Stat. 233; Act of Feb. 22, 1847, ch. 16, 9 Stat. 127; Act of March 2, 1819, ch. 46, 3 Stat. 488.

[3] An unsuccessful early effort at restriction was the Alien Act of 1798, ch. 58, 1 Stat. 570, a part of the Alien and Sedition Laws, which authorized the President to expel from the United States any alien deemed dangerous. This legislation was unpopular and expired at the end of its two-year term.

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controls, but these efforts were struck down as an invasion of an area of exclusive federal responsibility.[4]

Continued demands for federal action eventually bore fruit in a 1975 statute barring convicts and prostitutes.[5] Shortly thereafter, the first general immigration law was adopted in 1882.[6] This law imposed a head tax and barred several categories of undesirable aliens. During the subsequent years there were periodic major recodifications of the immigration laws,[7] eventually culminating in the Immigration Act of 1917.[8] A separate statute, enacted in 1924 and known as the National Origins Quota Law,[9] for the first time established numerical restrictions on immigration, superimposed on the qualitative restrictions prescribed by the 1917 Act. All immigration and nationality laws were consolidated in the Immigration and Nationality Act of 1952, also known as the McCarran-Walter Act.[10]

A noteworthy feature of this development was the constant enlargement of the scope and severity of the statutory provisions. In addition, new statutory provisions often were built upon the old structure. The result has been to produce a statutory pattern which in many respects is cumbersome, obscure, and out of harmony with current conceptions. A novice who approaches this edifice often is overwhelmed by its complexities. Even the expert sometimes experiences difficulties and frustrations. It seems evident that a thorough overhaul of the immigration laws is desirable in order to enhance clarity, assure substantive and procedural fairness, and sanction increased administrative flexibility in dealing with hardships and humanitarian concerns.

Each Congress witnesses some legislative efforts to deal with specific imperfections in the immigration laws. But, generally such efforts attract little attention and almost invariably are abortive.

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[4] The "Passenger Cases:" Chy Lung v. Freeman, 92 U.S. 275 (1875); Henderson v. Mayor of New York, 92 U.S. 259 (1875); Smith v. Turner, 48 U.S. 283 (1849). *Cf.* City of New York v. Miln, 36 U.S. (11 Pet.) 102 (1837).

[5] Act of March 3, 1875, ch. 141, 18 Stat. 477.

[6] Act of Aug. 3, 1882, ch. 376, 22 Stat. 214. Earlier the same year, Congress had passed the Chinese Exclusion Act of May 6, 1882, ch. 126, 22 Stat. 58, establishing an exclusion policy which remained in effect until revoked by the Act of Dec. 17, 1943, ch. 344, 57 Stat. 600.

[7] Act of Feb. 20, 1907, ch. 1134, 34 Stat. 898; Act of March 3, 1903, ch. 1012, 32 Stat. 1213; Act of March 3, 1891, ch. 551, 26 Stat. 1084.

[8] Act of Feb. 5, 1917, ch. 29, 39 Stat. 874.

[9] Act of May 26, 1924, ch. 190, 43 Stat. 153. The Act of May 19, 1921, ch. 8, 42 Stat. 5, had previously prescribed temporary numerical limitations.

[10] Act of June 27, 1952, ch. 477, 66 Stat. 166.

A significant exception occurred in 1965 when legislation was adopted, after insistent advocacy by Presidents Kennedy and Johnson, ending the discriminatory national origins quota system.[11] But this legislation merely modified a portion of the basic 1952 act, leaving the remainder intact. There has been little effective legislative activity since 1965.

Long exposure to the legislative process has convinced me that immigration legislation does not occupy a very high priority among Congressional concerns. Moreover, those who favor statutory revisions often are reluctant to propose them, since past experience has demonstrated to them that stirring the legislative pot may produce a stew even less palatable than that now available. Nevertheless, I believe it will serve a useful purpose to describe and discuss some of the statutory changes I believe desirable. Others doubtless would include additional items, but my enumeration may aid in stimulating further discussion.

STATUTORY STRUCTURE

Any general revision of the immigration law should simplify its structure, eliminating obscure and obsolete provisions which have accumulated over the years. Many such obscurities represent concepts which are no longer meaningful and which have persevered because no one has taken the trouble to eliminate or modify them.

One example of such pointless complexity appears in the various provisions for the exclusion,[12] deportation,[13] and denial of citizenship benefits[14] to subversives. The parallel directives of these various statutes are couched in amazingly detailed verbiage which is today largely meaningless. These statutes were developed and enlarged during successive eras of anti-radical apprehension, such as that following the assassination of President McKinley,[15] the Bolshevik scare of World War I,[16] the national security concern preceding World War II,[17] and the McCarthy witchhunt of the 1950's.[18] They are an anachronism when the United States maintains friendly relations with Communist and other leftist-oriented governments throughout the world. I certainly would not suggest that the United States should not adopt adequate measures to safeguard its national security. But I believe this legitimate concern should be expressed in statutory provisions which are simple, intelligible, and rationally related to current needs.

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[11] Act of Oct. 3, 1965, Pub. L. No. 89-236, 79 Stat. 911. The committee reports on this legislation are H.R. REP. No. 748, and H.R. REP. No. 1101, 89th Cong., 1st Sess. (1965).

[12] Immigration and Nationality Act §§ 212(a)(27)-(29) [hereinafter cited as I. & N. Act], 8 U.S.C. §§ 1182(a)(27)-(29) (1970). The power of Congress in this area recently was reaffirmed in *Kleindienst v. Mandel*, 408 U.S. 753 (1972).

[13] I. & N. Act §§ 241(a)-(c), 8 U.S.C. §§ 1251(a)-(c) (1970). Constitutional challenges to deportation provisions directed against subversives were rejected in *Harisiades v. Shaughnessy*, 342 U.S. 580 (1952) and *Galvon v. Press*, 347 U.S. 522 (1954).

[14] I. & N. Act § 313, 8 U.S.C. § 1424 (1970).

Another area permeated by obsolete and inconsistent statutory provisions relates to civil liabilities and administrative fines imposed against transportation lines for various infractions. Such obligations have been prescribed by the immigration laws since their inception, and have been designed to promote cooperation by transportation lines in assuring compliance with the law. The authority to impose such penalties has repeatedly been upheld.[19]

The present statute includes a variety of mandates which announce such civil obligations, including those relating to the failure to furnish proper manifests,[20] the detention and deportation of excluded aliens,[21] the failure to deport expelled aliens,[22] the failure to detain and deport excluded alien crewmen,[23] the failure to prevent the unauthorized landing of aliens,[24] the landing of aircraft,[25] the bringing of diseased aliens[26] and the unlawful bringing of aliens,[27] as well as additional provisions for criminal penalties.[28] But in many respects the statutory provisions dealing with civil obligations are uncoordinated and inconsistent. For no apparent reason, there are differing provisions regarding the company officials, agents, or employees against whom the obligations can be imposed, the amounts of the obligations, and the opportunities to seek amelioration. And there are glaring inadequacies in relation to the procedure for enforcing the penalty. The statute has little to say about such procedure, and what it does say is not always clear or consistent. It generally, but not invariably, states that determination of liability is to be made by the Attorney General. In one instance it declares that his determination shall be final,[29] but this declaration is omitted in other places. In most instances it authorizes a denial of clearance as an auxiliary weapon of enforcement. But other sections, for no apparent reason, make no mention of denial of clearance.[30] Obviously these statutory provisions need revision to promote clarity and consistency, as well as an assurance of fair consideration.

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[15] Act of March 3, 1903, ch. 1012, §§ 2, 38, 32 Stat. 1213.

[16] Anarchist Act of Oct. 16, 1918, ch. 186, 40 Stat. 1012.

[17] Alien Registration Act of June 28, 1940, ch. 439, § 23, 54 Stat. 673.

[18] Internal Security Act of 1950, ch. 1024, § 22, 64 Stat. 1006.

[19] Elting v. North German Lloyd, 287 U.S. 324 (1932); Oceanic Steam Nav. Co. v. Stranahan, 214 U.S. 320 (1909).

[20] I. & N. Act § 231 (d), 8 U.S.C. § 1221 (d) (1970).

[21] *Id.* § 237 (b), 8 U.S.C. § 1227 (b).

[22] *Id.* § 243 (e), 8 U.S.C. § 1253 (e).

[23] *Id.* § 254 (a), 8 U.S.C. § 1284 (a).

[24] *Id.* § 271, 8 U.S.C. § 1321.

[25] *Id.* § 239, 8 U.S.C. § 1229.

[26] *Id.* § 272, 8 U.S.C. § 1322.

[27] *Id.* § 273, 8 U.S.C. § 1323.

[28] *Id.* §§ 274-78, 8 U.S.C. §§ 1324-28.

THE GROUNDS FOR EXCLUSION

The present statute sets forth 31 categories of aliens who are barred from entry, and many of these categories can be divided into numerous subcategories.[31] Some of these statutory provisions are out of date and virtually meaningless; some are redundant; many are excessive. A complete revision of these provisions certainly is desirable. However, I do not intend to discuss the specifics of the numerous changes that seem warranted, except that I shall direct attention to one such necessary change. I would emphasize primarily two generalized revisions which, if adopted, would represent a giant step forward in modernizing this phase of the statute.

A Statute of Limitations for Excludability

While some of the grounds for exclusion, particularly those dealing with medical infirmities,[32] relate only to those presently suffering from such disabilities, many other grounds for exclusion are perpetual and forever bar the affected alien from the United States. Thus, for example, aliens who have been convicted for certain criminal offenses,[33] who have sought and obtained relief from military service on the ground of alienage,[34] who have been involved in specified subversive activities,[35] who have had one or more attacks of insanity,[36] or who have been convicted for possession of marihuana,[37] can never hope to enter the United States.[38] These exclusions extend into perpetuity and reject any opportunity for reformation[39] or for changed circumstances.[40] In practice, they often result in extraordinary inequities and hardships. Thus an alien who once sought relief from military service can never attain lawful permanent residence or citizenship in the United States, even if he is married to an American citizen. An airline hostess who unwittingly brought a package of narcotics is likewise barred as a trafficker in narcotics, even if she cooperated in bringing the real culprits to justice. Examples of such irrationality could be multiplied.

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[29] *Id.* § 239, 8 U.S.C. § 1229.

[30] A catchall provision additionally authorizes recovery of such penalties by civil suit, *id.* § 280, 8 U.S.C. § 1330.

[31] *Id.* § 212(a), 8 U.S.C. § 1182(a).

[32] *E.g.*, *id.* §§ 212(a)(1), (2), (4), (6)-(8), 8 U.S.C. §§ 1182(a)(1), (2), (4), (6)-(8).

[33] *Id.* §§ 212(a)(9)-(10), 8 U.S.C. §§ 1182(a)(9)-(10).

[34] *Id.* §§ 101(a)(19), 212(a)(22), 8 U.S.C. §§ 1101(a)(19), 1182(a)(22).

The perpetual bar to entry is irrational and unnecessary. What is needed is a statutory amendment limiting excludability to a designated period after the commission of the debarring offense. I suggest that a five-year limitation would be fully adequate.

Discretionary Authority to Waive Grounds for Exclusion

In my estimation, the need to provide for amelioration of the excessive severities of our exclusion laws is manifest. That need will continue even if the substantive changes I have proposed are adopted, since the mandatory exclusions will still cause family separations and other hardships in particular situations.

The present law does sanction a wide range of discretion where temporary entry is sought. Thus, the Attorney General, in conjunction with the Secretary of State, may in his discretion waive virtually any substantive[41] or documentary[42] ground for exclusion in regard to a temporary entrant. The Attorney General is empowered in his discretion to grant temporary parole into the United States for emergent or public interest reasons.[43]

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[35] *Id.* §§ 212(a)(27)-(29), 8 U.S.C. §§ 1182(2)(27)-(29).

[36] *Id.* § 212(a)(3), 8 U.S.C. § 1182(a)(3).

[37] *Id.*

[38] As noted under the next text caption, the Attorney General may grant waiver of any ground for inadmissibility for temporary entrants, except for aggravated subversive categories, and he may also authorize temporary parole for emergent reasons in the public interest.

[39] However, excludability for certain criminal offenses committed by juveniles has a time limit of 5 years. I. & N. Act § 212(a)(9), 8 U.S.C. § 1182(a)(9) (1970). Excludability for membership or affiliation in certain subversive organizations may be waived by the Attorney General for defectors who have been "actively opposed" to the program of such organizations for at least 5 years. *Id.* § 212(a)(28)(I), 8 U.S.C. § 1182(a)(28)(I).

[40] However, limited provisions for discretionary waiver of some exclusionary grounds are discussed under the next text caption.

[41] Kleindienst v. Mandel, 408 U.S. 753 (1972); I. & N. Act § 212(d)(3), 8 U.S.C. § 1182(d)(3) (1970). Such waivers may be granted by the attorney general after they are recommended by the Secretary of State. The

However, the opportunities to alleviate exclusion grounds for aliens seeking permanent entry are much more circumscribed. The 1917 Act authorized discretionary waiver of exclusion grounds for aliens returning after a temporary absence to an unrelinquished domicile in the United States of seven consecutive years.[44] The administrative interpretations of this provision of the 1917 Act were generous.[45] This generosity was criticized by Congress,[46] and the 1952 Act curtailed the ambit of the statute.[47] The result is that this remedy is now seldomly invoked.[48] However, the law authorizes the Attorney General in his discretion to waive the documentary requirements (immigrant visa and passport) for returning resident immigrants.[49]

The opportunities for waiver of the exclusions inhibiting the establishment of residence in this country by other aliens are even more sparse. As originally enacted, the Immigration and Nationality Act of 1952 offered little comfort to such aliens. In the ensuing years there have been sporadic legislative efforts to deal with specific humanitarian situations. Thus, for aliens with close relatives who are citizens or lawful permanent resident aliens, the law now permits discretionary waivers of excludability for tuberculosis or past mental illness,[50] for criminal violations or prostitution,[51] and for fraud in seeking entry.[52] But in almost every other re-

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statute specifies that such discretion may not be exercised for aliens in the aggravated subversive classes.

[42] I. & N. Act § 212(d)(4), 8 U.S.C. § 1182(d)(4) (1970). The requisite documents for temporary entrants are nonimmigrant visas and passports and they can be waived by the Attorney General and the Secretary of State acting jointly.

[43] *Id.* § 212(d)(5), 8 U.S.C. § 1182(d)(5).

[44] Act of Feb. 5, 1917, ch. 29, § 3, 39 Stat. 878.

[45] *See In re* B-, 1 I. & N. Dec. 204 (1942); *In re* L-, 1 I. & N. Dec. 1 (1940).

[46] S. REP. No. 1515, 81st Cong., 2d Sess. 384 (1950).

[47] I. & N. Act § 212(c), 8 U.S.C. § 1182(c) (1970).

[48] *See In re* S-, 6 I. & N. Dec. 392 (1955); *In re* M-, 5 I. & N. Dec. 642 (1954); *In re* T-, 6 I. & N. Dec. 136 (1954).

[49] I. & N. Act § 211(b), 8 U.S.C. § 1181(b) (1970).

[50] *Id.* § 212(g), *as amended* 8 U.S.C. § 1182(g).

[51] *Id.* § 212(h), *as amended* 8 U.S.C. § 1182(h).

[52] *Id.* § 212(i), *as amended* 8 U.S.C. § 1182(i).

spect[53] the exclusionary provisions of the statute cannot be waived, and perpetually bar entry into the United States, irrespective of any hardships or humanitarian considerations that may be involved.

I believe the inflexibility of the provisions of the immigration laws in regard to the exclusion of aliens is undesirable and the opportunities for amelioration are fragmented and inadequate. I would propose an amendment giving the Attorney General authority to waive any ground for exclusion on humanitarian grounds or for any other reason he deems in the public interest.

Exclusion of Marihuana Violations

Although there are numerous specific statutory provisions for exclusion that need revision, I shall, as previously indicated, mention only one such provision—the absolute bar to the entry of aliens who have been convicted of possession of marihuana.[54] In its original form, the 1952 Act merely barred violators of the laws relating to narcotic drugs.[55] A 1956 amendment barred those convicted for possession of such drugs.[56] The statute was again amended to reach those convicted for such violations relating to marihuana.[57] A consequence of this legislative development is that an alien convicted for possession of a single marihuana cigarette is forever precluded from entering the United States.

This is an irrational statutory provision, which definitely should be eliminated. I shall deal with the background of this provision more fully in proposing the elimination of a similar provision mandating the expulsion of aliens convicted in this country for possession of marihuana.[58]

EXCLUSION PROCEDURE

Like other aspects of the immigration laws, the statutory provisions dealing with entry procedures are in many respects archaic. Adopted to implement past conceptions they have persevered although their underlying conceptions have been discarded or discredited. I invite attention to the following needed revisions.

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[53] Mention should also be made of the authorization for discretionary waiver of the two-year foreign residence requirement for exchange visitors upon request of an interested government agency or a showing of exceptional hardship to close relatives. *Id.* § 212(e), *as amended* 8 U.S.C. § 1182(e).

[54] *Id.* § 212(a)(23), 8 U.S.C. § 1182(a)(23).

[55] *Id.*

[56] Act of July 18, 1956, Pub. L. No. 728, 70 Stat. 575.

[57] Act of July 14, 1960, Pub. L. No. 86-648, 74 Stat. 505.

[58] *See* notes 111-17 *infra* and accompanying text.

The Unreviewable Consular Decision Refusing a Visa

The 1952 Act specified that the Secretary of State is charged with responsibility for administering the provisions of the Act relating to the powers, duties, functions of diplomatic and consular offices, except the powers of consular officers relating to the granting or denying of visas.[59] This remarkable provision purports to deny to a Cabinet Officer the authority to control the activities of subordinate officials. While the purpose of this provision is not explained in the legislative reports, I believe its underlying motivations were a desire to preclude judicial review and a belief that the consul would be disposed to act less generously than his superiors. In my view both of these premises are unacceptable. In effect they give to consular officers of the United States all over the world unrestricted authority to determine whether they will issue a visa to aliens who appear before them. I have no doubt that most consular officers seek to act reasonably. But they can be wrong, and in some instances a consular officer doubtless may act arbitrarily. Since the visa is an indispensable document for those who wish to enter the United States,[60] an erroneous or arbitrary refusal of a visa can have a devastating effect on an applicant's aspirations.

The grant of unreviewable authority to the consul has been criticized as inconsistent with American traditions of due process.[61] Apparently in response to these criticisms, the State Department has developed a process of informal review, which is now incorporated in its regulations.[62] Under this system, the Visa Office of the State Department will review the case if requested to do so by a member of Congress, an attorney, or an interested party. If error is found, the Visa Office will issue an "advisory opinion" to the consul. While such an expression suggests rather than directs, and is not binding on the consul, a consul who receives such an "advisory opinion" generally will abide by it.

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[59] I. & N. Act § 104(a), 8 U.S.C. § 1104(a) (1970).

[60] *Id.* §§ 211(a), 212(a)(20), (26), 8 U.S.C. §§ 1181(a), 1182(a)(20), (26).

[61] *See* WHOM WE SHALL WELCOME, REPORT OF PRES. COMM. ON IMMIGRATION AND NATIONALITY 146-52 (1953); Rosenfield, *Consular Non-Reviewability*, 41 A.B.A.J. 1109 (1955).

[62] 22 C.F.R. § 42.130 (1975).

But it is evident that this informal procedure does not go far enough. What is needed is an amendment of the statute eliminating the directive making the consul's ruling unreviewable, and establishing a right of appeal to a Board of Visa Appeals. If Congress wishes to limit judicial review in such cases, it can do so by appropriate statutory directives.

The Double Check on Entries

Another statutory anachronism is the provision that an entry applicant's qualifications must be passed on by two separate government agencies. This duplication originally appeared in the Immigration Act of 1924, which established for the first time a requirement that entry applicants must obtain visas.[63] Since immigration officers then operated only within the United States, it was natural for Congress to confer the visa-issuing function on American consular officers stationed in foreign countries.[64] This pattern was continued in the 1952 codification.[65] The consular officer has been enjoined not to issue a visa to any alien he found to be inadmissible.[66] At the same time, the prospective entrant has been warned that the issuance of a visa did not guarantee his admission to the United States, since his admissibility would be determined by an immigration officer at the port of arrival.[67]

This repetitive procedure was endorsed by the authors of the 1952 Act as assuring a "double check" of the applicant's qualifications.[68] That conclusion reflected their characteristic suspicion that some government officers might act generously and their efforts to inhibit such generosity.

Insofar as immigrant visas are concerned, this hypothetical double check is meaningless, since immigration officers invariably accredit the consular issuance of a visa. While immigration officers sometimes question the bona fides of an alien seeking to enter as a nonimmigrant, there is no reason why this cannot be done by one officer when the nonimmigrant visa is issued. And the idea that immigration officers cannot operate overseas has been refuted by the experience of many years. Immigration officers of the United States are today stationed in many countries. Indeed, there are immigration district directors in Frankfurt, Germany; Hong Kong, B.C.C.; Mexico City, Mexico; and Rome, Italy, as well as other immigration officers in Athens, Greece; Guadalajara, Mexico; Hamilton, Bermuda; Manila, P.I.; Monterrey, Mexico; Montreal, Canada; Naples, Italy; Nassau, Bahamas; Ottawa, Canada; Palermo, Italy; Tijuana, Mexico; Tokyo, Japan; Toronto, Canada; Vancouver, Canada; Victoria, Canada; Vienna, Austria, and Winnipeg, Canada.[69] There is no practical reason why there should be more than a single determination of admissibility and this should be done by immigration officers stationed in the foreign countries, subject to a check of identity upon arrival. The Department of State should be relieved of the visa-issuing burden, except for visas to diplomatic and international organization officials. In isolated areas where it is not feasible to station or send immigration officers, the consuls could exercise delegated authority to determine the applicant's admissibility. Similar delegations are now made with respect to some immigration functions.[70]

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[63] Act of May 26, 1924, ch. 190, § 13(a), 43 Stat. 161.

[64] *Id.* § 2.

[65] I. & N. Act § 221, 8 U.S.C. § 1201 (1970).

[66] Act of May 26, 1924, ch. 190, § 2(f), 43 Stat. 153 [now I. & N. Act § 221(f), 8 U.S.C. § 1201(f) (1970)].

[67] *Id.* § 2(g) [now I. & N. Act § 221(h), 8 U.S.C. § 1201(h) (1970)].

[68] *See* S. Rep. No. 1137, 82d Cong., 2d Sess. (1952); H.R. Rep. No. 1365, 82d Cong., 2d Sess. (1952).

The Labor Certification Requirement

The immigration laws of the United States traditionally have been concerned with the protection of American labor. This concern was originally expressed in the Contract Labor Act of 1885,[71] which prohibited the entry of aliens for whom work contracts had been arranged in advance. Changing world and domestic conditions eventually made the contract labor laws obsolete. The growth of the labor unions and the imposition of numerical restrictions on immigration provided assurance against an influx of cheap foreign labor. And it eventually was concluded by Congress that the public interest would best be served if immigrants were free to arrange in advance for employment in this country. Therefore, the Contract Labor Act was repealed by the 1952 Act.[72]

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[69] 8 C.F.R. § 100.4 (1975).

[70] *See* 2 C. GORDON & H. ROSENFIELD, IMMIGRATION LAW AND PROCEDURE § 6.14d (rev. ed. 1975).

[71] Act of Feb. 26, 1885, ch. 164, 23 Stat. 332.

[72] *See* note 68 *supra*.

However, Congress believed that some standby protection of American labor should be included in the statute.[73] Therefore the 1952 Act introduced the so-called labor certification requirement, which authorized the Secratary of Labor to preclude the entry of specific immigrants or classes of immigrants if he found that they were coming for employment which would deprive American workers of jobs or undercut their wages or working conditions.[74]

In its original form this sanction rarely was invoked. However, the restrictive pattern was altered by the major amendments of 1965, which directed that specified classes of immigrants could not come to the United States unless they first obtained the requisite labor certification.[75] This converted the labor certification from a passive requirement, to be fulfilled only if the Secretary of Labor demanded it, to an active requirement, which had to be observed by all immigrants, except those with designated close relatives in the United States.

It is my conviction, which is shared by government officials, legislators and legislative staff attorneys, and other knowledgeable observers, that the labor certification requirement in its present form is a failure. In the first place, its impact on the employment situation in the United States, even in this era of high unemployment, is negligible. A substantial segment of prospective immigrants are close relatives of American citizens and resident aliens, and are thus exempt from the labor certification requirement. Another segment are wives and children who will not enter the labor market. The remainder, aggregating less than 100,000 annually, is hardly significant when compared to a work force of 80 million.

In the second place, the procedure to enforce this requirement has been an administrative nightmare. The decisional criteria are obscure and often unrevealed and the administrative officials frequently have been criticized for processes and determinations that are arbitrary and lacking in due process.[76]

Despite the general agreement regarding the labor certification procedure's inadequacies, there has been no serious effort to revise it. The reason seems to be the opposition of organized labor to removal of a protective device. I believe there is no sound reason for the retention of this unsatisfactory and obstructive mandate in

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[73] *Id.*

[74] I. & N. Act § 212(a)(14), 8 U.S.C. § 1182(a)(14) (1970).

[75] Act of Oct. 3, 1965, Pub. L. No. 89-236, § 10, 79 Stat. 917.

[76] *See* recommendation 73-2 in 3 ADMINISTRATIVE CONFERENCE OF THE UNITED STATES (1973).

388

its present version. I would favor an amendment of the statute restoring the labor certification requirement to its original form, to be invoked only upon an affirmative finding of need by the Secretary of Labor. In my view such a standby measure would afford adequate protection to American labor.

Exclusion Without a Hearing

One of the regrettable survivals of a past era is the authority to exclude aliens without a hearing on the basis of confidential information. Originally developed in the absence of statute during World War II, its use blossomed during the Cold War period following that conflict, and its constitutionality was upheld by a bare majority of the Supreme Court.[77] The Supreme Court later ruled that this extraordinary procedure could not be used to captiously deny a hearing to a resident of this country returning from a brief absence abroad.[78] But Congress expressly ratified the exclusion-without-hearing procedure in the McCarran-Walter Act of 1952, and it is still part of the parent statute.[79]

The device of exclusion without a hearing, and its reliance on faceless informers, has been severely criticized as inconsistent with American traditions of fair play.[80] As a former government official who observed this system in operation and officially defended it, I believe such criticism is fully justified. During the Cold War period this device was used extensively to bar supposed Communist Party members, often on flimsy and unverified information, without affording them any opportunity to defend themselves. While its use has diminished in recent years,[81] the authority still remains on the books and it is still invoked in some cases. Administrative officers sometimes have denied hearings on evidence which is inadequate or which is unavailable for production at a hearing. Unfortunately this is the course of least resistance, since denial of entry on secret information avoids the possibility of public criticism if entry were granted to a person who later proved to be objectionable.

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[77] Shaughnessy v. Mezei, 345 U.S. 206 (1953); Knauf v. Shaughnessy, 338 U.S. 537 (1950).

[78] Chew v. Colding, 344 U.S. 590 (1953). *See also* Roggenbihl v. Lusby, 116 F. Supp. 315 (D. Mass. 1953); *cf.* Chew v. Rogers, 257 F.2d 607 (D.C. Cir. 1958).

[79] I. & N. Act § 235(c), 8 U.S.C. § 1225(c) (1970); 8 C.F.R. § 235.8 (1975).

[80] Rosenfield, *Necessary Administrative Reforms in Immigration and Nationality Act of 1952*, 27 FORDHAM L. REV. 145 (1958).

[81] Gordon, *Due Process in Immigration Proceedings*, 50 A.B.A.J. 34, 38 (1964).

It is clear to me that the present statutory provision authorizing exclusion without hearing is wrong and should be modified or repealed. I do not believe the Republic would collapse if the authorization for denial of a hearing to entry applicants were removed from the statute. However, I would not object to a more limited amendment, which would place stringent limitations on the invocation of this exceptional procedure. In the first place, I would specify that this power could be exercised only during time of war or declared national emergency. Such a limitation appears in other sections of the statute,[82] but was omitted here. Secondly, I would narrowly restrict the authority to invoke this power to situations clearly and directly involving the national security. The present statute is impermissibly broad, *e.g.*, in authorizing its use in cases which merely involve suspected membership in the Communist Party or other subversive groups.

Place of Deportation for Excluded Aliens

The statute directs that an alien arriving in the United States whose exclusion is ordered shall be immediately deported to the country whence he came.[83] "Country whence he came" in this context is a term of art, and normally contemplates that the excluded alien will be restored so far as possible to his situation before arrival in this country. Usually this means the country in which he had a place of abode before coming to this country.[84]

In this statutory provision we confront another survival from a different age, during which immigrants were coming by ship, and an exclusion order meant that they were to be put back on that ship or another ship and returned to their homes. Today most immigrants come by plane, and there is no urgent need to return an excluded alien to his original place of abode, if there are more acceptable alternatives. Indeed, the assumption that an excluded alien will be immediately sent home often is unfounded, in the light of the time-consuming administrative and judicial remedies available to him.[85] In this respect superior procedures are prescribed for the execution of an order for the expulsion of an alien in the United States.[86] An expelled alien may select the country of his destination, if that country will accept him, and if such a selection is not made or is fruitless, the Attorney General may deport the alien to other countries that will accept him, such as the country of his nationality or a number of other designated countries.[87]

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[82] *E.g.*, I. & N. Act § 215, 8 U.S.C. § 1185 (1970).

[83] *Id.* § 237(a), 8 U.S.C. § 1227(a).

[84] *See* United States *ex rel.* Milanovic v. Murff, 253 F.2d 941 (2d Cir. 1958) (alien could not be sent to native country he had left as a refugee 13 years earlier); Wah v. Shaughnessy, 190 F.2d 488 (2d Cir. 1951); Stacher v. Rosenberg, 216 F. Supp. 511 (S.D. Cal. 1963) (long time resident of U.S. was excluded after temporary absence even though the U.S. was the country from whence he came).

It seems to me that similar flexibility in exclusion cases would be beneficial to the alien and the government. I can see no reason why the excluded alien should not be permitted to go to the country of his nationality or any other country that will accept him. And I can see no reason why the government should be restricted to one place where the excluded alien can be sent, if he is a national of another country or if any other appropriate designation can be found. Consequently I would favor an amendment of the statute giving an excluded alien the opportunity to select his own destination, and giving the Attorney General the authority, similar to that conferred by the expulsion statute, to select other appropriate destinations if the excluded alien makes no selection or is not acceptable to the country he selects.

QUOTA PROVISIONS

The Western Hemisphere Quota

There were no numerical restrictions on immigration from the Western Hemisphere until 1968. In a gesture of amity, the National Origins Act of 1924 exempted natives of Western Hemisphere countries from quota restrictions,[88] and this exemption was continued by the Act of 1952.[89]

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[85] *See, e.g.*, Rogers v. Quan, 357 U.S. 193 (1958); Ma v. Barber, 357 U.S. 185 (1958).

[86] Provisions of prior law, no longer in effect, which likewise provided for deportation of an expelled alien to the "country whence they came" were construed to relate to the country of the alien's citizenship, if he had not acquired a domicile or citizenship elsewhere. United States *ex rel.* Mensevich v. Tod, 264 U.S. 134 (1924); United States *ex rel.* Boraca v. Schlotfeldt, 109 F.2d 106 (7th Cir. 1940); United States *ex rel.* Di Paola v. Reimer, 102 F.2d 40 (2d Cir. 1939).

[87] I. & N. Act § 243(a), 8 U.S.C. § 1253(a) (1970).

[88] Act of May 26, 1924, ch. 190, § 4(c), 43 Stat. 155.

[89] I. & N. Act § 101(a)(27), 8 U.S.C. § 1101 (1970).

In its original version, the bill proposing the major statutory amendments which eventually were enacted in 1965 did not include any change in the exempt status of Western Hemisphere aliens. However, this issue was debated during consideration of the measure. A proposal for restriction of Western Hemisphere immigration was rejected by the House of Representatives,[90] but was favored by the Senate.[91] In the end, those who favored restriction prevailed.[92] As enacted, the 1965 Act established a separate quota of 120,000 annually for the Western Hemisphere, to become effective July 1, 1968, unless Congress directed otherwise.[93] The 1965 Act established a Select Commission on Western Hemisphere Immigration,[94] which recommended deferment of the special quota,[95] but this recommendation was not adopted by Congress, and the special Western Hemisphere quota became effective July 1, 1968. Since the provision for a Western Hemisphere quota was a last minute compromise in the legislative deliberations preceding adoption of the 1965 Act, it was not incorporated into the basic statute. The result is that there are two separate and uncoordinated statutes regulating immigration—one for the Western Hemisphere and the other for the rest of the World (designated as the Eastern Hemisphere). Moreover, the Western Hemisphere quota provisions are not well-detailed, and contain none of the preferences prescribed in the basic statute, except the exemption for immediate relatives of American citizens. This places immigrants from the Western Hemisphere at a distinct disadvantage, since there are no preferences within the 120,000 quota for those with various close family ties or with needed skills.

There is no doubt that this discrimination against Western Hemisphere aliens is an historical accident, attributable to the last-minute compromise placing the provisions for the Western Hemisphere quota in the 1965 Act. The Administration has opposed this irrational discrimination, and legislation to end it has been introduced by Representative Rodino for several years but has not yet been enacted.[96]

It is clear that any provisions dealing with the Western Hemisphere quota should be incorporated into the basic statute. I would favor a single worldwide quota for all immigrants, other than the exempt classes. In my view, the retention of the separate quotas for the Eastern and Western Hemispheres is unnecessary and undesirable. What is more important is that the preferences now fixed by the statute be made applicable to Western Hemisphere immigrants. It is equally important, in my view, that the liberalizing amendments should not actually be restrictive. The basic statute has an annual limitation of 20,000 quota immigrants from any single country.[97] If applied to the Western Hemisphere countries, this limitation would actually reduce immigration from Mexico to a fraction of its present level of over 50,000 annually.[98]

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[90] *See* H.R. Rep. No. 745, 89th Cong., 1st Sess. 46 (1965).

[91] *See* S. Rep. No. 748, 89th Cong., 1st Sess. (1965).

[92] *See* H.R. Rep. No. 1101, 89th Cong., 1st Sess. 15 (1965).

[93] Act of Oct. 3, 1965, § 21(e), 79 Stat. 921.

[94] *Id.* § 21(a).

[95] Select Commission on Western Hemisphere Immigration, Final Report 9-12 (1968).

[96] *See* H.R. 981, 94th Cong., 1st Sess. (1975).

It seems to me that the close proximity of Mexico and Canada warrants exceptional treatment. The Administration has urged that the situation of Canada and Mexico, as friendly neighbors, warrants allowing those countries a special annual limitation of 35,000 immigrants each. While this proposal was rejected by a majority of the House Judiciary Committee,[99] it was supported in a minority report by Chairman Rodino.[100] In my view this is a situation in which form must yield to substance. Moreover, a reduction in the opportunities for legal immigration from Mexico would inevitably lead to increased pressure for illegal entries. In order to recognize the special situation of Canada and Mexico, and to avoid an actual restrictive impact of a liberalizing measure, I believe a special provision, along the lines urged by Chairman Rodino, should be made to allow immigration allotments for Canada and Mexico which would not substantially reduce their present level of legal immigration.

Preferences

The present law establishes seven preferences for the allocation of visas within the world wide quota.[101] Four of these, the first, second, fourth, and fifth preferences, seek to promote family unity, and are allotted to specified close relatives of American citizens or resident aliens. Two, the third and sixth preferences, depend on occupational skills or status, and seek to fulfill national needs. The seventh preference relates to refugees. I believe a number of changes in the preference system are warranted.

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[97] I. & N. Act § 202, 8 U.S.C. § 1152 (1970).
[98] *See* 1974 INS ANN. REP.
[99] *See* H.R. REP. No. 461, 93d Cong., 1st Sess. (1973).
[100] *Id.* at 49.
[101] I. & N. Act § 203, 8 U.S.C. § 1153 (1970).

The first needed change, already discussed under the preceding caption, would extend to Western Hemisphere aliens the same preference system now available in the Eastern Hemisphere.

Second, the present statute grants the second preference to the spouses and unmarried sons and daughters of lawful resident aliens, but does not mention the parents of such aliens.[102] I believe the principle of family unity fostered elsewhere in the statute would best be served by the extension of this preference to include the parents of such aliens.

Third, the present statute grants exempt immediate relative status to the parents of American citizens, but only if the citizen is at least 21 years of age.[103] The evident purpose of this restriction, whose constitutionality has been upheld by the courts,[104] is to deny benefits to aliens to whom a child is born while they are illegally or temporarily in the United States. Yet the child in such cases undoubtedly is an American citizen entitled to reside in the United States. And in other contexts Congress has granted special benefits, without age limitations, to parents of citizen children.[105] I believe it reasonable under such circumstances to give some preferred status to the parents of a minor citizen so as to facilitate the child's remaining in the country where he is a citizen.

GROUNDS FOR DEPORTATION

Absence of Statute of Limitations

Early deportation statutes fixed periods of limitations for deportability originally 1 year after entry and then increased to 3 years and eventually to 5 years.[106] However, the 1952 Act eliminated all statutes of limitations, and there is now no statute restricting the time during which deportation proceedings may be commenced. And since the statutory provisions for deportation generally are retroactive, they may reach back into the past, subjecting an alien to deportation for conduct which was not then proscribed—even where the period of limitations had long since expired under previous law.[107]

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[102] *Id.* § 203(a)(2), 8 U.S.C. § 1153(a)(2).

[103] *Id.* §§ 201(a), (b), 8 U.S.C. §§ 1151(a), (b).

[104] Faustino v. INS, 432 F.2d 429 (2d Cir. 1970), *cert. denied*, 401 U.S. 921 (1971); Perdido v. INS, 420 F.2d 1179 (5th Cir. 1969).

[105] *E.g.*, I. & N. Act § 212(a)(14), 8 U.S.C. § 1182(a)(14) (1970) (waiver of labor certification for Western Hemisphere immigrants); *id.* § 212(g), 8 U.S.C. § 1182(g) (waiver of excludability for tuberculosis or mental defects); *id.* § 212(h), 8 U.S.C. § 1182(h) (waiver of excludability for crime and prostitution); *id.* § 212(i), 8 U.S.C. 1182(i) (waiver of excludability for misrepresentation); *id.* § 241(f), 8 U.S.C. 1251(f) (waiver of deportability for misrepresentation).

[106] Act of Feb. 5, 1917, ch. 29, § 19, 39 Stat. 874; Act of March 3, 1903,

The absence of a statute of limitations in the deportation law has been severely criticized.[108] The ancient traditions of our law require provision for repose, after the lapse of specified periods of time, for all civil and criminal infractions, except murder and treason. The removal of time restrictions for deportation in the 1952 Act bespeaks a callous attitude toward aliens as human beings. Apparently the sponsors of that legislation were willing to disregard the need for repose in human affairs, and the compelling humanitarian concerns developed by aliens during long residence in this country, including family ties, economic interests, and deep roots in the community. Moreover, the present statute countenances the shocking consequence of requiring the deportation of an alien who was brought as a child, has been reared in our society, and would be sent to a country in which he would be a stranger.[109]

It is true that the immigration laws now provide a number of avenues for relief in such situations.[110] Some of these discretionary remedies, and proposals to expand their scope, will be discussed hereafter. But all of these remedies depend on the exercise of discretion by the Attorney General. What is needed is a statute

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ch. 1012, § 21, 32 Stat. 1213; Act of March 3, 1891, ch. 551, § 11, 26 Stat. 1084; Act of Oct. 19, 1888, ch. 1210, 25 Stat. 565.

[107] Mulcahey v. Catalanotte, 353 U.S. 692 (1957); Lehmann v. United States *ex rel.* Carson, 353 U.S. 685 (1957); Marcello v. Bonds, 349 U.S. 302 (1955).

[108] WHOM WE SHALL WELCOME, *supra* note 61; Maslow, *Recasting Our Deportation Laws*, 56 COLUM. L. REV. 309, 325 (1956).

[109] *E.g.*, Marcello v. Bonds, 349 U.S. 302 (1955); Harisiades v. Shaughnessy, 342 U.S. 580 (1952). Challenges to deportation as cruel and unusual punishment in such situations have been unsuccessful. *Cf.* Marcello v. Kennedy, 194 F. Supp. 748 (D.D.C. 1961), *aff'd on other grounds*, 312 F.2d 874 (D.C. Cir. 1962), *cert. denied*, 373 U.S. 933 (1963). *See also* Wolf v. Boyd, 287 F.2d 520 (9th Cir. 1961).

[110] *E.g.*, I. & N. Act § 244, 8 U.S.C. § 1254 (1970) (suspensiin of deportation); *id.* § 245, 8 U.S.C. § 1255 (adjustment of status); *id.* § 249, 8 U.S.C. § 1259 (registry).

granting amnesty from deportation after the lapse of a fixed period of time.

I believe therefore that the deportation law should be amended to provide periods of limitations in the following respects: First, a person who was brought to this country as a child, and has lived here for at least 10 years, is a product of our society and should not be subject to deportation on any ground. In every other case, an alien should not be subject to deportation if 5 years have elapsed since his last involvement in conduct which would have rendered him subject to deportation.

Marihuana Violators

Since 1922[111] there have been laws providing for the deportation of narcotics offenders. The Act of 1952 codified and expanded those laws.[112]

In their original form these statutes were found inapplicable to convictions for the possession of marihuana.[113] However, in 1960 Congress amended the statute to make it specifically applicable to marihuana violations.[114] Under the present statutory provisions, an alien who is convicted of possessing even a single marihuana cigarette is subject to perpetual exclusion from the United States, and to deportation if he is already a resident of this country.[115]

In recent years there has been extensive discussion of the excessive severity of federal and state provisions for criminal punishment of persons found guilty of possessing marihuana. Substantial amelioration of the federal criminal provisions was accomplished in 1970.[116] More recently, the National Commission on Marihuana and Drug Abuse recommended repeal of all criminal provisions for possession of marihuana. Other proposals have urged that the offense be made a civil violation, subject to a small penalty, rather than a criminal offense. Some government officials have stated that they would welcome a change in the marihuana laws, and ameliorating changes have already been adopted by many states. And many prosecutors have declined to prosecute for simple possession of marijuana.

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[111] Act of May 26, 1922, ch. 402, 42 Stat. 596.

[112] I. & N. Act § 241(a)(11), 8 U.S.C. § 1251(a)(11) (1970).

[113] Hoy v. Rojas-Gutierrez, 267 F.2d 490 (9th Cir. 1959); Hoy v. Mendoza-Rivera, 267 F.2d 451 (9th Cir. 1959).

[114] Act of July 14, 1960, Pub. L. No. 86-648, § 9, 74 Stat. 504.

[115] I. & N. Act § 212(a)(23), 8 U.S.C. § 1182(a)(23) (1970) (exclusion); id. § 241(a)(11), 8 U.S.C. § 1251(a)(11) (deportation).

[116] Comprehensive Drug Abuse Prevention and Control Act of 1970, Pub. L. No. 91-513, 84 Stat. 1236.

Unfortunately, this enlightened attitude in regard to the possession of marihuana has not yet been reflected in the immigration statutes. The inflexible provisions of those statutes still require the exclusion and deportation of any aliens convicted for possession of marihuana. Consequently the immigration authorities have been confronted with many cases in which the statute commands the banishment from the United States of youthful aliens who have been convicted for possessing a few marihuana cigarettes. The enforcement of the statutory mandate often would result in permanent separation of families. It is patent that this is an unconscionable and unreasonable penalty.

Recognizing the disparity between the nature of the offense and the grave impact of its consequence, the Immigration and Naturalization Service has frequently exercised its prosecutive discretion to withhold deportation proceedings or the execution of deportation orders in such cases, particularly when potential separation of families is involved. But this dispensation depends on administrative discretion and the affected alien remains under a perpetual threat of banishment or exclusion from the United States.

It seems manifest that the retention of these irrationally severe provisions in the immigration laws cannot be justified in the light of the apparent national consensus favoring easing or elimination of the sanctions for simple possession of marihuana. Legislation to modify these provisions has been introduced in Congress.[117] Although the objectives of these bills were endorsed by the Department of Justice, they have not yet been acted on by Congress. I urge that Congress take action promptly to eliminate the present provisions requiring exclusion from the United States and deportation of aliens convicted for possession of marihuana.

Clemency Provisions for Criminal Violators

Since 1917 the immigration laws have provided for deportation of certain aliens convicted in the United States for commission of crimes involving moral turpitude.[118] The same laws have also included concomitant provisions expunging deportability when the relevant convictions have been ameliorated by a pardon or a judicial recommendation against deportation.[119]

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[117] H.R. 681, 93d Cong., 1st Sess. (1973); H.R. 2166, 93d Cong., 1st Sess. (1973); S. 277, 93d Cong., 1st Sess. (1973).

In the 58 years since enactment of the 1917 Act, various other types of criminal convictions in the United States have been added to the catalogue of deportable offenses. Thus, under the present statute an alien resident of the United States may incur deportability upon conviction of specified improprieties in relation to alien registration or visa documents,[120] narcotics,[121] smuggling of aliens,[122] unlawful possession of weapons,[123] certain subversive activities,[124] and importation of aliens for prostitution or any other immoral purpose.[125] However, the statute makes no provision for avoidance of deportability in such cases by a pardon or judicial recommendation against deportation.

Since there is no sound basis for differentiation, the failure to make uniform provisions for amelioration appears to be an oversight. Indeed, the present statutory formula sanctions amelioration of deportability for aliens convicted of the more serious offenses involving moral turpitude but not for those convicted of lesser offenses. I believe this is an irrational situation, and I urge that it be corrected by an appropriate amendment of the statute providing that a pardon or judicial recommendation against deportation will expunge deportability based on any criminal offense.

A major 1956 enactment imposing severe penalties against narcotics violators included a provision prohibiting relief from deportation, through a pardon or judicial recommendation against deportation, for aliens convicted of offenses related to narcotics or marihuana.[126] Under prior law, a pardon or recommendation against deportation precluded deportation for such convictions.[127] While severe penalties against narcotics traffickers are appropriate, it seems to me that the inflexible preclusion of clemency is unjustified. In practice, this preclusion has been excessively harsh when the offense was minimal, the offender youthful, and when deportation would disrupt family ties. I can perceive no sound justification for precluding the humanitarian exercise of clemency in such situations, and I urge that the statutory preclusion be eliminated.

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[118] I. & N. Act § 241(a)(4), 8 U.S.C. § 1251(a)(4) (1970); Act of Feb. 5, 1917, ch. 29, § 19, 39 Stat. 874.

[119] I. & N. Act § 241(b), 8 U.S.C. § 1251(b) (1970); Act of Feb. 5, 1917, ch. 29, § 19, 39 Stat. 874.

[120] I. & N. Act § 241(a)(5), 8 U.S.C. § 1251(a)(5) (1970).

[121] *Id.* § 241(a)(11), 8 U.S.C. § 1251(a)(11).

[122] *Id.* § 241(a)(13), 8 U.S.C. § 1251(a)(13).

[123] *Id.* § 241(a)(14), 8 U.S.C. § 1251(a)(14).

[124] *Id.* §§ 241(a)(15), (16), (17), 8 U.S.C. §§ 1251(a)(15), (16), (17).

[125] *Id.* § 241(a)(18), 8 U.S.C. § 1251(a)(18).

[126] Act of July 18, 1956, ch. 629, §§ 301(b), (c), *amending* I. & N. Act §§ 241(a)(11), (b), 8 U.S.C. §§ 1251(a)(11), (b) (1970).

[127] United States *ex rel.* De Luca v. O'Rourke, 213 F.2d 759 (8th Cir. 1954); DangNam v. Bryan, 74 F.2d 379 (9th Cir. 1934).

The statutory provision referred to in the first paragraph of this subsection above, giving effect to a judicial recommendation against deportation for aliens convicted of crimes involving moral turpitude, stipulates that such judicial recommendations will be given effect only if made by the sentencing court "at the time of first imposing sentence or within 30 days thereafter."[128] The purpose of the provision manifestly is to preclude last-minute efforts to forestall deportation. This legislative objective is fulfilled when the sentencing court is aware of the defendant's amenability to deportation and of its power to make a recommendation which would avoid this additional penalty, resulting from the conviction and sentence. Such awareness generally is present when the sentence is imposed in a federal court. However, the overwhelming preponderance of criminal prosecutions take place in the state courts and such courts frequently are unaware that the convicted defendant is amenable to deportation and that they are empowered to avert this consequence by a timely recommendation against deportation.

Some courts which have inadvertently omitted to make a recommendation against deportation at the time of "first" imposing sentence have later sought to remedy this omission, but such recommendations after the prescribed statutory period have been ineffectual.[129] Likewise disregarded have been *nunc pro tunc* efforts to correct the original judgment.[130]

The undoubted objective of the statute is to give the sentencing court an opportunity to ameliorate a severe collateral consequence of the conviction, when it deems such a consequence excessive in the light of the particular circumstances.[131] The objective is, in effect, defeated when the sentencing court is unaware of its authority to make such a recommendation. Therefore I believe the statute should be amended by eliminating the restriction on the time when the sentencing court can make its recommendation against deportation.

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[128] I. & N. Act § 241(b), 8 U.S.C. § 1251(b) (1970).

[129] United States *ex rel.* Klonis v. Davis, 13 F.2d 630 (2d Cir. 1926); Bruno v. United States, 336 F. Supp. 204 (W.D. Mo. 1971).

[130] Velez-Lozano v. INS, 463 F.2d 1305 (D.C. Cir. 1972); Marin v. INS, 438 F.2d 932 (9th Cir. 1971); United States *ex rel.* Piperkoff v. Esperdy, 267 F.2d 72 (2d Cir. 1959).

DISCRETIONARY AUTHORITY TO WAIVE GROUNDS FOR DEPORTATION

During much of their history, the immigration laws were cast in inflexible terms, and afforded little room for the exercise of discretion. Mounting hardships eventually persuaded Congress to allow the amelioration of such hardships. A major breakthrough occurred in the Alien Registration Act of 1940,[132] which authorized the Attorney General to suspend deportation of certain deportable aliens whose deportation would result in hardship to their families. However, their deportability could not be obliterated until the Attorney General's action was ratified by Congress. In approving this measure, President Roosevelt expressed doubt as to the constitutionality of the provision for congressional veto of administrative action, and similar doubts have since been expressed in scholarly discussions.[133] Yet, provision for congressional veto of the Attorney General's grant of suspension of deportation has remained in the statutes since 1940.[134]

In the years after 1940 other discretionary remedies have been provided to permit discretionary waiver of deportability in some situations. The principal remedy today is known as adjustment of status, and enables the Attorney General, in his discretion, to grant permanent residence status to certain aliens in the United States whose original temporary entry was lawful and who are otherwise admissible to the United States.[135] Another statutory remedy is known as registry, which authorizes the grant of permanent residence to certain aliens who have resided in the United States since 1948.[136] There is no requirement of congressional approval of such discretionary actions of the Attorney General. However, few grounds of deportation can be waived in such proceedings.

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[131] *See* Costello v. INS, 376 U.S. 120 (1964); Gubbels v. Hoy, 261 F.2d 952 (9th Cir. 1958).

[132] Alien Registration Act of 1940, ch. 439, title II, 54 Stat. 670.

[133] *See* Cooper, *The Legislative Veto and the Constitution*, 30 GEO. WASH. L. REV. 467 (1962); Ginnane, *The Control of Federal Administration by Congressional Resolutions and Committees*, 66 HARV. L. REV. 569 (1953).

[134] *See* I. & N. Act § 244(c), 8 U.S.C. § 1254(c) (1970).

[135] *Id.* § 245, 8 U.S.C. § 1255.

[136] *Id.* § 249, 8 U.S.C. § 1259.

Some improvement could be made in the present statutory provisions, such as eliminating the need for congressional approval of suspension of deportation, and by advancing the cutoff date to qualify for registry to 1968 or some later date.[137] However, these changes would not offer a complete remedy for the present inadequacies. I believe the inflexibility of the deportation provisions of the immigration law is undesirable and that the opportunities for amelioration are fragmented and inadequate. Indeed, affected persons often have sought intervention by Congress through private relief legislation, an unsatisfactory and usually unattainable device to engage the attention of Congress on individual cases. I recommend, therefore, a complete revision of the provisions of the immigration laws relating to the Attorney General's authority to waive excludability or deportability. The Attorney General should be given discretionary authority to waive any grounds for exclusion or deportation, without the need for soliciting congressional approval.

In this connection, another needed change in the provisions relating to adjustment of status should be mentioned. A 1965 amendment, adopted to meet supposed enforcement problems, denies this remedy to natives of Western Hemisphere countries.[138] The effect of this provision is to deny to all natives of Western Hemisphere countries the opportunity, available to immigrants from all other parts of the world, to attain permanent residence in the United States, even if they are otherwise fully qualified for such status. Legislation to end this discrimination is pending in Congress,[139] and I believe such legislation merits unqualified support.

EXPULSION PROCEDURE

The deportation process was one of the earliest and most potent expressions of administrative justice. Although the procedure in

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137. A similar proposal appears as H.R. 8713, § 4, 94th Cong., 1st Sess. (1975). *See also* H.R. REP. No. 94-506, 94th Cong., 1st Sess. 16 *et seq.* (1975).

138. *See* H.R. REP. No. 745, 89th Cong., 1st Sess. 22 (1965); S. REP. No. 748, 89th Cong., 1st Sess. 24 (1965).

139. H.R. 8713, 94th Cong., 1st Sess. (1975). *See also* H.R. REP. No. 94-506, 94th Cong., 1st Sess. 11 (1975).

401

deportation cases originally was quite informal, over the years there has been a steady improvement.[140] In major part, this improvement resulted from corrective action by the courts; in part it was the product of internal administrative development, influenced no doubt by the attitude of the courts, the Bar, the media, and the public. Although some might not share this view, it is my belief that in general, deportation procedures have been developing satisfactorily. I would, however, favor the following changes.

Applicability of Administrative Procedure Act

There is a constitutional right to a fair hearing in deportation cases.[141] However, over the years this right has not always meant the same thing. Due process of law is a developing concept, and this development has been quite notable in deportation proceedings.

For many years, the deportation hearing was conducted by a single immigration officer, known as the presiding inspector, who acted both as prosecutor and judge. This arrangement was criticized, but it continued without change until the enactment of the Administrative Procedure Act of 1946.[142] This statute dealt generally with all government agencies, and sought to improve the quality of administrative adjudications and to achieve a separation between adjudicating and prosecuting functions. In 1950 the Supreme Court held the Act applicable to deportation hearings.[143] But Congress quickly repudiated this decision by specifically exempting deportation hearings from the procedural requirements of the Act.[144] This exemption was thereafter upheld by the Supreme Court.[145]

In the ensuing years there has been constant improvement in deportation procedures. While the exemption from the Act's procedural requirements remains on the books,[146] the procedures now in effect are closely analogous to those required by the Act.[147] The principal difference is that the officers who preside at the hearings are called special inquiry officers (now designated immigration judges) and are selected through normal civil service procedures rather than under the Act.

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[140] *See* Gordon, *supra* note 81.

[141] Yamataya v. Fisher, 189 U.S. 86 (1903) (The Japanese Immigrant Case).

[142] Ch. 324, 60 Stat. 237; *see* Gordon, *supra* note 81.

[143] Wong Yang Sung v. McGrath, 339 U.S. 33 (1950).

[144] Act of Sept. 27, 1950, ch. 1052, 64 Stat. 1044.

[145] Marcello v. Bonds, 349 U.S. 302 (1955).

[146] I. & N. Act § 242(b), 8 U.S.C. § 1252(b) (1970).

[147] *See* Gordon, *supra* note 81; Maslow, *supra* note 108, at 309.

The exemption of deportation hearings from the Act's requirements is an anachronism, which has no rational meaning and serves no useful purpose. Removal of this exemption would enhance the status of the deportation hearing officers and would provide firmer assurance of fairness in the deportation process. It seems to me that the retention of this exemption is attributable only to inertia, and I urge that it be removed and that the procedural requirements of the Act be made fully applicable to deportation proceedings.

Statutory Recognition of the Board of Immigration Appeals

The Board of Immigration Appeals is an important administrative tribunal, which hears appeals in deportation cases and other matters. However, the Board has never been a statutory body, and it exists only by virtue of the Attorney General's regulations.[148] The Attorney General has created the Board and has fixed its powers. Thus he can and does modify its powers, and he could, if he wished, abolish the Board. It is true that in practice the Attorney General has never attempted to interfere with the Board's decision-making process,[149] except to the extent that he retains authority to review its decisions.[150] Moreover, immigration practitioners are generally quite satisfied with the Board's performance, although they of course reserve the lawyer's right to disagree with individual decisions. Yet the lack of statutory sanction does detract from the Board's stature and may lead to public uncertainty regarding its independence.

I believe there is no reason to continue the Board's tenuous status, and I favor the enactment of legislation making it a statutory body.

NATIONALITY PROVISIONS

The nationality provisions of the statute frequently are confusing and uncoordinated. A complete overhaul of this aspect of the statute is doubtless justified. However, I will deal briefly with only a few proposed changes.

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[148] 8 C.F.R. pt. 3 (1975).

[149] Shaughnessy v. United States *ex rel.* Accardi, 349 U.S. 280 (1955); United States *ex rel.* Accardi v. Shaughnessy, 347 U.S. 260 (1954).

[150] 8 C.F.R. § 3.1(d)(2) (1975).

A Statute of Limitations for Denaturalization

Since 1906 there has been statutory authorization for judicial proceedings to revoke naturalizations which were obtained by fraud or illegality.[151] The constitutionality of this remedy has been repeatedly upheld by the Supreme Court.[152]

Recognizing the severity of this sanction and its possible impact on apparently established citizenship rights, the Supreme Court has formulated the rule that naturalizations cannot be revoked unless the government establishes their impropriety by evidence which is clear, unequivocal and convincing, and does not leave the issue in doubt.[153] And the policy of the Department of Justice has been to refrain from bringing denaturalization suits unless the citizenry of the United States would thereby be bettered.[154] The combination of these judicial and administrative policies has led to a reluctance on the part of the Department of Justice to bring denaturalization suits, and few such proceedings have been instituted in recent years.

Yet the authority to revoke naturalizations remains in the statute. Moreover, the statutes have never prescribed a time limitation for bringing a denaturalization suit. Therefore a naturalization theoretically is subject to revocation, upon a charge that it was improperly obtained, at any time after it has been granted. Indeed, there have been numerous instances where the courts have vacated naturalizations granted many years earlier.[155]

The absence of a statute of limitations on denaturalization suits has been criticized as placing the naturalized citizen's status in perpetual jeopardy.[156] However, the courts have rejected contentions that such protracted delay denies due process of law[157] or constitutes laches.[158]

As I have indicated in the previous discussion dealing with deportation, the absence of a statute of limitations is repugnant to American jurisprudence. Moreover, the situation in which a naturalized American citizen is forever fearful of the Sword of Damocles hanging over his head is abhorrent to our traditional concepts of freedom. And it can cogently be contended that this perpetual liability makes the naturalized American a second class citizen.

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[151] I. & N. Act § 340, 8 U.S.C. § 1451 (1970); Nationality Act of 1940, ch. 876, § 338, 54 Stat. 1137; Act of June 29, 1906, ch. 3592, § 15, 34 Stat. 596.

[152] Knauer v. United States, 328 U.S. 654 (1946); Luria v. United States, 231 U.S. 9 (1913); Johannessen v. United States, 225 U.S. 227 (1912).

[153] Baumgartner v. United States, 322 U.S. 665 (1944); Schneiderman v. United States, 320 U.S. 118 (1943).

[154] Dept. of Justice Circular Letter No. 107 (1909), *noted in* 3 C. GORDON & H. ROSENFIELD, IMMIGRATION LAW AND PROCEDURE § 20.3 (rev. ed. 1975).

[155] *E.g.*, Costello v. United States, 365 U.S. 265 (1961) (27 years).

[156] WHOM WE SHALL WELCOME, *supra* note 61; A.B.A. Res. VI-12 (1968).

[157] Costello v. United States, 365 U.S. 265 (1961).

[158] *Id.*; United States v. Oddo, 314 F.2d 115 (2d Cir. 1963).

American citizenship is an invaluable right, and the public interest requires that the citizen enjoy a reasonable security in his status. Consequently it seems to me that a statute of limitations on the bringing of denaturalization suits is needed, and I would favor a statutory amendment outlawing such suits after the lapse of a reasonable period following the naturalization. Because of the difficulty often encountered in discovering evidence of impropriety, a ten-year period of limitations in such cases would not be unreasonable.

Repeal of Unconstitutional Expatriation Statutes

Until 1907 there were no statutes prescribing grounds for expatriation, and the manner in which a person could lose his American citizenship was uncertain.[159] In 1907 Congress passed the first statutory declaration that expatriation would occur if the citizen was naturalized in or took an oath of allegiance to a foreign state.[160] The Nationality Act of 1940 considerably enlarged the grounds for expatriation.[161] And the statutory grounds for expatriation were again expanded in the Immigration and Nationality Act of 1952.[162]

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[159] *See* TSIANG, THE QUESTION OF EXPATRIATION IN AMERICA PRIOR TO 1907 (1942); *cf.* Act of July 28, 1868, R.S. 1999 (recognizing a right of expatriation without defining the manner in which this could take place).

[160] Act of March 2, 1907, ch. 2534, § 2, 34 Stat. 1228. The 1907 Act also provided that an American woman would lose her citizenship if she married a foreigner. *Id.* § 3. *See* Mackenzie v. Hare, 239 U.S. 299 (1915) (rejecting a constitutional challenge). This portion of the 1907 Act was repealed by the Act of Sept. 22, 1922, ch. 411, § 7, 42 Stat. 1021. Another provision of the 1907 Act, held to relate only to loss of diplomatic protection, declared that if a naturalized citizen resided in a foreign state for certain periods, it was presumed that he had lost his American citizenship. Act of March 2, 1907, ch. 2534, § 2, 34 Stat. 1228. *See* United States v. Gay, 264 U.S. 353 (1924).

[161] Nationality Act of 1940, ch. 876, §§ 401-09, 54 Stat. 1137.

[162] I. & N. Act §§ 349-57, 8 U.S.C. §§ 1481-89 (1970).

The expatriation grounds set forth in the 1940 and 1952 Acts encompassed many situations in which American citizenship could be lost without the citizen's assent. The constitutionality of such deprivations was soon challenged in the courts, and the courts were receptive. In a series of decisions, the Supreme Court declared unconstitutional various statutes which prescribed expatriation for desertion from the U.S. armed forces during time of war,[163] evasion of military service by absence from the United States,[164] residence abroad by a naturalized citizen,[165] and voting in a foreign political election.[166] Yet Congress has not amended the statute to eliminate these unconstitutional provisions and other statutory provisions dependent on them.

I believe the retention of these unconstitutional provisions as part of the existing statute may be misleading to the public and to members of the bar who are unfamiliar with the development of these adjudications. Therefore it is desirable that the statutory provisions relating to expatriation be recast along the lines projected by the Supreme Court decisions. The revised statute manifestly should repeal the statutory provisions which have been invalidated as unconstitutional.

Elimination of Witnesses in Naturalization Proceedings

The statutes dealing with naturalization, since their inception, have required that the petition for naturalization be verified by two witnesses. The present statute also requires that the witnesses be credible citizens of the United States, that they must have personally known petitioner, and that they endorse the petitioner's character and attachment to the United States.[167]

While witnesses to the naturalization petition may have played a significant role prior to 1906, when there was no administrative supervision of the naturalization process, they serve no useful purpose today. The petitioner selects his own witnesses, and their testimony has little significance in evaluating the petitioner's fitness. The Immigration and Naturalization Service is now given extensive powers to investigate naturalization petitions, and its inquiry invariably includes fingerprint checks and thorough interrogation by a naturalization examiner.[168] In addition, the Service may con-

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163. Trop v. Dulles, 356 U.S. 86 (1958).
164. Kennedy v. Mendoza-Martinez, 372 U.S. 144 (1963).
165. Schneider v. Rusk, 377 U.S. 163 (1964).
166. Afroyim v. Rusk, 387 U.S. 253 (1967).
167. I. & N. Act §§ 334(a), 335(f), 8 U.S.C. §§ 1445(a), 1446(f) (1970).
168. *Id.* § 335, 8 U.S.C. § 1446 (instructions on form N-400).

duct a personal investigation of the naturalization petitioner in the localities of his residence and employment.[169] The qualifications of the petitioner are assessed on the basis of such official inquiries rather than the endorsements of the petitioner's witnesses.

The requirement for two verifying witnesses to the naturalization proceeding is thus archaic and meaningless. In practice, it produces unnecessary hardships since the witnesses have to take time off from their employment, often imposing a financial burden on them and on the naturalization petitioner, who sometimes must reimburse them for their lost wages. In addition, a petitioner who has lived in several places has the difficult task of locating verifying witnesses who will furnish depositions for each such place.[170]

It seems clear that we here confront another statutory requirement which has outlived its usefulness and is retained only through sheer inertia.[171] Elimination of the requirement of two verifying witnesses to the naturalization petition is long overdue.

Reacquisition of American Citizenship by Expatriates

To a limited extent our laws have recognized the need to facilitate the return to the United States and reacquisition of American citziensship by those who have lost or relinquished it.[172] However, in other respects such expatriates are given no special consideration, and are treated like all other aliens.[173]

The failure to make such special provision often has resulted in separation of families and other hardships, particularly in regard to many young Americans whose opposition to our involvement in Vietnam led them to relinquish American citizenship.[174] While opinions may differ on the soundness of their actions, it seems to me that a welcome to our prodigal sons is a reasonable and humanitarian approach to this problem. Therefore, I would favor an extension of present statutory provisions, giving special benefits to expatriates, in order to facilitate return to the United States and reacquisition of American citizenship by those who have previously lost or relinquished it.

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[169] *Id.*

[170] *Id.* § 335(f), 8 U.S.C. § 1446(f).

[171] S. REP. No. 1515, 81st Cong., 2d Sess. 738, 745 (1950).

[172] *See* I. & N. Act §§ 101(a)(27)(c), 324(a), 327, 8 U.S.C. §§ 1101(a)(27)(c), 1435(a), 1438 (1970).

[173] *See* United States *ex rel.* Marks v. Esperdy, 315 F.2d 673 (2d Cir. 1963), *aff'd by equally divided court*, 377 U.S. 1010 (1964); I. & N. Act § 202(b), 8 U.S.C. § 1152(b) (1970).

[174] *See, e.g.*, Jolley v. INS, 441 F.2d 1245 (5th Cir. 1971), *cert. denied*, 404 U.S. 946 (1971).

Simplification of Conditions for Acquiring Citizenship Derivatively

One of the most confusing and unsatisfactory areas of the law concerns the citizenship status of the foreign-born children of American citizens. Under some conditions the children born abroad to American citizens acquire American citizenship at birth,[175] subject, in some instances, to fulfillment of prescribed conditions subsequent in order to retain their American citizenship.[176] In other situations, alien children can acquire American citizenship through the naturalization of their parents.[177]

In my estimation, the conditions prescribed in the present law are unnecessarily complex. Moreover, in some situations they are irrational, such as those precluding transmission of citizenship to a foreign born child by a native-born American parent under the age of 19 (age 21 under prior law) who has lived in the United States all or most of his life.[178]

But the greatest difficulties have been presented by the constant changes in the conditions applicable to the acquisition of citizenship in such cases. Different conditions have been prescribed by laws effective prior to May 24, 1934;[179] between May 24, 1934 and January 12, 1941;[180] between January 13, 1941 and December 23, 1952;[181] and on or after December 23, 1952.[182] Since the acquisition of derivative citizenship status is dependent on the law in effect at the time the decisive occurrences took place, it is necessary to identify dates and consult disparate laws before determining whether there is a valid claim to American citizenship. The result is a confusing jumble which confounds even the experts. At times, the responsible government agencies have prepared complicated charts for the guidance of their officers, but such efforts have not been entirely satisfactory. Further, they have not been made generally available to the Bar and the public.

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[175] I. & N. Act §§ 301, 309, 8 U.S.C. §§ 1401, 1409 (1970).

[176] *See* Rogers v. Bellei, 401 U.S. 815 (1971).

[177] I. & N. Act §§ 320, 321, 8 U.S.C. §§ 1431, 1432 (1970).

[178] Ruiz v. INS, 410 F.2d 382 (6th Cir. 1969); *In re* S- F-, 2 I. & N. Dec. 182, 195 (1944) (approved by the Att'y Gen.).

[179] Rev. Stat. § 1993, 18 Stat. 350 (1802); id. § 2172, 18 Stat. 380 (1802).

[180] Act of May 24, 1934, ch. 344, § 1, 48 Stat. 797.

[181] Nationality Act of 1940, ch. 876, §§ 201, 313, 314, 54 Stat. 1137.

[182] *See* notes 175 & 176 *supra*.

The prevailing fog of uncertainty in this area is a source of constant frustration, both to the expert and the novice; a situation hardly consistent with the importance and the dignity of American citizenship. I see no reason why this fog cannot be dispelled by a statute defining, in simple and clearcut terms, the conditions under which derivative citizenship can be acquired in such cases. Moreover, it is important that such conditions be made equally applicable to all past occurrences, without disturbing any citizenship rights already vested. Such legislation would clarify statutory provisions which are unnecessarily complex, and would promote greater certainty in adjudicating citizenship rights.

CONCLUSION

In the foregoing discussion I have outlined a number of necessary amendments to the immigration and nationality laws of the United States. I do not suggest that this is a complete list, since I, myself, could suggest additional changes, and I am certain that others would offer other proposals. For example, I have not discussed the Rodino Bill to penalize the knowing employment of aliens illegally in the United States, pending in the current Congress and strongly supported by the Administration, since I am not fully convinced that this is necessary or desirable legislation. I have attempted, however, to describe a number of deficiencies which urgently need correction. It is my hope that this discussion will be useful at some future date, when an enlightened public awareness will provide the needed stimulus for action.

B. NUMBERS AND CRITERIA

38.

TABLE 1.
IMMIGRATION TO THE UNITED STATES
1820-1978

[From 1820 to 1867, figures represent alien passengers arrived; from 1868 through 1891 and 1893 through 1897, immigrant aliens arrived; from 1892 through 1894 and 1898 to the present time, immigrant aliens admitted.]

Year	Number of persons	Year	Number of persons	Year	Number of persons	Year	Number of persons
1820-1978 1/	48,664,965						
1820 ...	8,385						
1821-1830 .	143,439	1861-1870 .	2,314,824	1901-1910 .	8,795,386	1941-1950 .	1,035,039
1821 ...	9,127	1861 ...	91,918	1901 ...	487,918	1941 ...	51,776
1822 ...	6,911	1862 ...	91,985	1902 ...	648,743	1942 ...	28,781
1823 ...	6,354	1863 ...	176,282	1903 ...	857,046	1943 ...	23,725
1824 ...	7,912	1864 ...	193,418	1904 ...	812,870	1944 ...	28,551
1825 ...	10,199	1865 ...	248,120	1905 ...	1,026,499	1945 ...	38,119
1826 ...	10,837	1866 ...	318,568	1906 ...	1,100,735	1946 ...	108,721
1827 ...	18,875	1867 ...	315,722	1907 ...	1,285,349	1947 ...	147,292
1828 ...	27,382	1868 ...	138,840	1908 ...	782,870	1948 ...	170,570
1829 ...	22,520	1869 ...	352,768	1909 ...	751,786	1949 ...	188,317
1830 ...	23,322	1870 ...	387,203	1910 ...	1,041,570	1950 ...	249,187
1831-1840 .	599,125	1871-1880 .	2,812,191	1911-1920 .	5,735,811	1951-1960 .	2,515,479
1831 ...	22,633	1871 ...	321,350	1911 ...	878,587	1951 ...	205,717
1832 ...	60,482	1872 ...	404,806	1912 ...	838,172	1952 ...	265,520
1833 ...	58,640	1873 ...	459,803	1913 ...	1,197,892	1953 ...	170,434
1834 ...	65,365	1874 ...	313,339	1914 ...	1,218,480	1954 ...	208,177
1835 ...	45,374	1875 ...	227,498	1915 ...	326,700	1955 ...	237,790
1836 ...	76,242	1876 ...	169,986	1916 ...	298,826	1956 ...	321,625
1837 ...	79,340	1877 ...	141,857	1917 ...	295,403	1957 ...	326,867
1838 ...	38,914	1878 ...	138,469	1918 ...	110,618	1958 ...	253,265
1839 ...	68,069	1879 ...	177,826	1919 ...	141,132	1959 ...	260,686
1840 ...	84,066	1880 ...	457,257	1920 ...	430,001	1960 ...	265,398
1841-1850 .	1,713,251	1881-1890 .	5,246,613	1921-1930 .	4,107,209	1961-1970 .	3,321,677
1841 ...	80,289	1881 ...	669,431	1921 ...	805,228	1961 ...	271,344
1842 ...	104,565	1882 ...	788,992	1922 ...	309,556	1962 ...	283,763
1843 ...	52,496	1883 ...	603,322	1923 ...	522,919	1963 ...	306,260
1844 ...	78,615	1884 ...	518,592	1924 ...	706,896	1964 ...	292,248
1845 ...	114,371	1885 ...	395,346	1925 ...	294,314	1965 ...	296,697
1846 ...	154,416	1886 ...	334,203	1926 ...	304,488	1966 ...	323,040
1847 ...	234,968	1887 ...	490,109	1927 ...	335,175	1967 ...	361,972
1848 ...	226,527	1888 ...	546,889	1928 ...	307,255	1968 ...	454,448
1849 ...	297,024	1889 ...	444,427	1929 ...	279,678	1969 ...	358,579
1850 ...	369,980	1890 ...	455,302	1930 ...	241,700	1970 ...	373,326
1851-1860 .	2,598,214	1891-1900 .	3,687,564	1931-1940 .	528,431		
1851 ...	379,466	1891 ...	560,319	1931 ...	97,139	1971 ...	370,478
1852 ...	371,603	1892 ...	579,663	1932 ...	35,576	1972 ...	384,685
1853 ...	368,645	1893 ...	439,730	1933 ...	23,068	1973 ...	400,063
1854 ...	427,833	1894 ...	285,631	1934 ...	29,470	1974 ...	394,861
1855 ...	200,877	1895 ...	258,536	1935 ...	34,956	1975 ...	386.194
1856 ...	200,436	1896 ...	343,267	1936 ...	36,329	1976 ...	398,613
1857 ...	251,306	1897 ...	230,832	1937 ...	50,244	1976, TQ	103,676
1858 ...	123,126	1898 ...	229,299	1938 ...	67,895	1977 ...	462,315
1859 ...	121,282	1899 ...	311,715	1939 ...	82,998	1978 ...	601,442
1860 ...	153,640	1900 ...	448,572	1940 ...	70,756		

From 1869 to 1976, the data is for fiscal years ended June 30. Prior to fiscal year 1869, the periods covered are as follows: from 1820-1831 and 1843-1849, the years ended on September 30-- 1843 covers 9 months; from 1832-1842 and 1850-1867, the years ended on December 31-- 1832 and 1850 covers 15 months. For 1868, the periods ended on June 30 and covers 6 months. The transition quarter (TQ) for 1976 covers the 3-month period, July-September 1976. Beginning October 1, 1976, the fiscal years ended on September 30.

United States Department of Justice
Immigration and Naturalization Service

39.

TABLE 6.
IMMIGRANTS ADMITTED BY CLASSES UNDER THE IMMIGRATION LAWS AND COUNTRY OR REGION OF BIRTH
YEAR ENDED SEPTEMBER 30, 1978

(NUMBERS OF VISAS ISSUED AND IMMIGRANTS ADMITTED WILL NOT NECESSARILY AGREE. DIFFERENCES MAY BE CAUSED BY FAILURE OF ALIENS TO MAKE USE OF THE VISA ISSUED OR BY IMMIGRANTS WHO ARE ADMITTED TO THE UNITED STATES IN THE YEAR FOLLOWING THE ONE IN WHICH THE VISA WAS ISSUED.)

COUNTRY OR REGION OF BIRTH	NUMBER ADMITTED	IMMIGRANTS SUBJECT TO NUMERICAL LIMITATIONS			IMMIGRANTS EXEMPT FROM NUMERICAL LIMITATIONS								
										ACT OF APRIL 7, 1970			
		TOTAL	EASTERN HEMI-SPHERE 1/	WESTERN HEMI-SPHERE	* TOTAL	PARENTS OF U.S. CITIZENS	WIVES OF U.S. CITIZENS	HUSBANDS OF U.S. CITIZENS	CHILDREN OF U.S. CITIZENS	TOTAL	SPOUSES OF U.S. CITIZENS	CHILDREN OF SPOUSES OF U.S. CITIZENS	OTHER CLASSES
ALL COUNTRIES ...	601,442	341,104	165,743	175,361	260,338	23,043	49,151	28,094	23,957	6,004	5,387	618	128,513
EUROPE	73,198	48,429	47,800	629	24,769	3,962	10,965	4,755	2,553	1,520	1,374	146	1,030
AUSTRIA	467	226	217	9	241	33	98	55	18	23	21	2	14
CZECHOSLOVAKIA	764	564	559	5	200	32	109	30	16	4	4	-	8
DENMARK	409	150	148	2	259	11	126	72	30	19	18	1	3
FRANCE	1,844	852	836	16	992	37	502	251	67	92	89	3	63
GERMANY	6,790	1,738	1,697	41	5,052	362	3,036	382	843	419	371	48	73
GREECE	7,035	4,780	4,771	9	2,255	579	659	632	343	92	91	1	40
HUNGARY	881	672	662	10	209	65	112	44	16	17	17	-	13
IRELAND	1,180	719	710	9	461	31	198	119	29	41	40	1	95
ITALY	7,415	5,089	5,055	34	2,326	646	706	329	171	112	103	9	84
NETHERLANDS	1,153	614	592	22	539	36	266	147	32	64	63	1	16
POLAND	5,050	3,646	3,621	25	1,404	209	717	192	124	30	29	1	52
PORTUGAL	10,445	9,232	9,225	7	1,213	722	182	127	74	63	60	3	45
ROMANIA	2,097	1,703	1,693	10	394	106	118	91	39	10	9	1	16
SPAIN	2,297	1,092	1,038	54	1,205	101	398	231	77	52	47	5	266
SWEDEN	628	299	297	2	329	11	196	66	22	19	19	-	25
SWITZERLAND	706	382	369	13	324	19	192	87	34	22	22	-	12
U.S.S.R.	5,161	4,874	4,869	5	287	78	111	92	5	8	8	-	33
UNITED KINGDOM	14,245	8,796	8,460	336	5,449	404	2,516	1,238	679	412	348	64	174
YUGOSLAVIA	2,621	1,943	1,932	11	678	242	223	133	32	22	22	-	16
OTHER EUROPE	2,071	1,130	1,117	13	941	82	460	190	100	57	51	6	38
ASIA	249,776	104,579	104,322	257	145,197	13,743	15,390	9,260	8,723	2,661	2,408	253	95,472
CHINA & TAIWAN	21,315	15,875	15,829	46	5,440	3,341	1,486	373	186	121	117	4	377
HONG KONG	5,158	3,992	3,952	40	1,166	92	580	234	132	57	50	7	71
INDIA	20,753	18,880	18,863	17	1,873	609	378	342	196	62	60	2	226
INDONESIA	684	423	421	2	261	52	108	47	25	19	14	5	10
IRAN	5,861	3,484	3,477	7	2,377	332	830	1,083	63	21	21	-	48
IRAQ	2,188	1,876	1,875	1	312	108	96	107	6	3	3	-	2
ISRAEL	3,276	2,079	2,055	24	1,197	99	470	408	128	48	45	3	90
JAPAN	4,010	1,973	1,960	13	2,037	134	1,214	209	173	201	190	11	160
JORDAN	3,483	2,756	2,749	7	727	130	245	236	85	11	11	-	20
KOREA	29,288	18,823	18,816	7	10,465	2,161	3,202	190	3,907	1,003	941	62	314
LEBANON	4,556	3,755	3,746	9	801	179	260	263	81	8	8	-	34
PHILIPPINES	37,216	19,141	19,105	36	18,075	7,042	5,202	696	1,301	862	740	122	292
RYUKYU ISLANDS	7	2	2	-	5	1	-	-	-	-	-	-	4
SYRIA	1,410	1,137	1,133	4	273	78	88	98	4	8	8	-	27
THAILAND	3,574	1,971	1,958	13	1,603	75	586	216	429	157	132	25	142
TURKEY	1,578	938	938	-	640	205	146	122	22	19	19	-	40
VIETNAM	88,543	2,268	2,262	6	86,275	79	192	23	176	23	13	10	85,782
OTHER ASIA	16,868	7,207	7,180	27	9,661	276	635	959	207	56	54	2	7,926
AFRICA	11,524	7,749	7,666	83	3,775	335	1,463	1,497	294	124	114	10	152
EGYPT	2,836	2,236	2,231	5	600	215	180	134	18	14	14	-	39
OTHER AFRICA	8,688	5,513	5,435	78	3,175	120	1,283	1,363	186	110	100	10	113
OCEANIA	4,402	2,686	2,668	18	1,716	144	807	383	191	110	99	11	81
AUSTRALIA	1,765	882	870	12	883	23	433	208	92	77	70	7	50
OTHER OCEANIA	2,637	1,804	1,798	6	833	121	376	175	90	33	29	4	31
NORTH AMERICA	220,770	144,516	1,076	143,440	76,254	2,760	16,149	14,360	10,367	1,286	1,116	170	31,342
CANADA	16,863	10,829	408	10,421	6,034	166	2,088	1,369	1,043	399	350	49	309
MEXICO	92,367	66,962	77	66,885	25,405	963	6,791	8,692	5,814	562	484	78	2,583
BARBADOS	2,969	2,528	8	2,520	441	41	150	161	99	7	5	2	10
CUBA	29,754	1,566	15	1,551	28,188	245	88	61	50	6	6	-	27,742
DOMINICAN REPUBLIC .	19,458	16,422	11	16,411	3,036	105	1,209	803	641	32	29	3	290
HAITI	6,470	5,348	8	5,340	1,122	99	411	439	136	9	8	1	32
JAMAICA	19,269	16,471	34	16,437	2,798	325	890	890	544	33	31	2	112
TRINIDAD & TOBAGO ..	5,973	4,973	9	4,964	1,000	60	409	310	150	10	10	-	49
COSTA RICA	1,573	931	4	927	642	30	277	112	104	13	9	4	14
EL SALVADOR	5,866	4,571	4	4,567	1,295	80	922	230	367	21	18	3	23
GUATEMALA	3,996	3,096	6	3,090	900	37	405	209	213	21	18	3	67
HONDURAS	2,727	1,669	2	1,667	1,058	65	543	105	234	18	16	2	13
NICARAGUA	1,888	1,275	2	1,273	613	49	296	103	144	8	8	-	13
PANAMA	3,108	1,721	5	1,716	1,387	129	653	176	401	15	15	-	17
OTHER NORTH AMERICA.	8,539	6,244	489	5,755	2,295	346	822	972	379	120	105	15	60
SOUTH AMERICA	41,764	31,147	213	30,934	10,617	981	4,429	2,673	1,079	305	276	29	430
ARGENTINA	3,732	2,829	39	2,790	903	113	356	270	64	30	30	-	62
BRAZIL	1,923	1,026	49	977	897	46	491	155	102	71	61	10	34
CHILE	3,122	2,286	5	2,281	836	93	381	231	97	33	32	1	51
COLOMBIA	11,032	7,768	25	7,743	3,264	185	1,300	638	982	75	69	6	95
ECUADOR	5,732	4,380	11	4,369	1,352	75	541	388	259	19	17	2	70
GUYANA	7,614	6,821	6	6,815	793	150	274	237	100	9	7	2	23
PERU	5,243	3,628	18	3,610	1,615	154	690	506	175	37	33	4	95
URUGUAY	1,052	830	15	815	222	37	90	63	8	8	8	-	20
VENEZUELA	986	616	6	610	370	12	195	96	61	8	7	1	24
OTHER SOUTH AMERICA.	1,324	923	7	916	401	30	203	88	56	15	12	3	10

1/ INCLUDES 9,601 CONDITIONAL ENTRANTS UNDER SECTION 203(a)(7)(A) OF P.L. 89-236, WHOSE IMMIGRANT STATUS DOES NOT BECOME FINAL UNTIL 2 YEARS AFTER ENTRY.

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

40.

U.S. DEPARTMENT OF STATE

Bureau of Consular Affairs

VISA SERVICES **WASHINGTON, D.C.**

Number 21 **Volume** IV

IMMIGRANT NUMBERS FOR JULY 1980

A. STATUTORY NUMBERS

1. This bulletin summarizes the availability of immigrant numbers during July Consular officers are required to report to the Department of State all qualified applicants for numerically limited visas; and the Immigration and Naturalization Service reports the demand of all qualified applicants for adjustment of status. Allocations of numbers were made, to the extent possible under the numerical limitations, for the demand received by June 10th in the chronological order of the reported priority dates. If the demand could not be satisfied within the statutory or regulatory limits, the class or foreign state or dependent area, in which demand was excessive, was deemed to be oversubscribed. The cut-off date for an oversubscribed category is the priority date of the first applicant who could not be reached within the statutory or regulatory limits. Only applicants who have a priority date earlier than the cut-off date may be allotted a number. Immediately that it becomes necessary, during the monthly allotment of numbers, to recede a cut-off date, supplemental requests for visa numbers will be honored only if the priority dates fall within the new cut-off date.

2. Issuances of visas are governed by provisions of Section 203(a) of the Immigration and Nationality Act, as amended, which prescribes preference classes as follows:

First preference (unmarried sons and daughters of U.S. citizens): 20% of the over-all limitation of 280,000 in any fiscal year;
Second preference (spouses and unmarried sons and daughters of aliens lawfully admitted for permanent residence): 26% of over-all limitation; plus any numbers not required for first preference;
Third preference (members of the professions or persons of exceptional ability in the sciences and arts): 10% of over-all limitation;
Fourth preference (married sons and daughters of U.S. citizens): 10% of over-all limitation plus any numbers not required by the first three preference categories;
Fifth preference (brothers and sisters of U.S. citizens 21 years of age or over): 24% of over-all limitation, plus any numbers not required by the first four preference categories;
Sixth preference (skilled and unskilled workers in short supply): 10% of over-all limitation;
Nonpreference (other immigrants): numbers not used by the six preference categories.

3. A labor certification under Section 212(a)(14) or satisfactory evidence that the provisions of that section do not apply to the alien's case is a prerequisite for nonpreference classification. Since all beneficiaries of approved third and sixth preference petitions are required to have a labor certification in support of the preference petition, such applicants are thereby entitled also to the nonpreference classification. Therefore, if visas are not available for them within their preference classes, and if nonpreference visas are available for their foreign state or dependent areas, these aliens may apply for nonpreference visas.

4. Section 203(b) of the Immigration and Nationality Act provides that visas be given to applicants in order of preference classes. However, Section 202(e) of the Act provides that, whenever the maximum number of visas have been made available to natives of a foreign state or dependent area in any fiscal year, in the next following fiscal year visas will be made available by applying the preference limitations to the foreign state (20,000) or dependent area (600) limitations. Foreign state, China, and dependent area, Hong Kong, listed below benefit under the provisions of Section 202(e) of the Act.

5. On the chart below the listing of a date under any class indicates that the class is oversubscribed (See paragraph 1): "C" means current, i.e., that numbers were available for all qualified applicants; and "U" means unavailable, i.e., that no numbers were available.

			PREFERENCE				
FOREIGN STATE	1ST	2ND	3RD	4TH	5TH	6TH	NONPREFERENCE
ALL FOREIGN STATES AND DEPENDENT AREAS EXCEPT THOSE LISTED BELOW	C	12-22-79	C	C	5-1-79	10-1-79	U
CHINA	C	12-8-79	9-1-79	6-15-78	8-8-75	1-15-79	U
INDIA	C	12-22-79	C	C	4-1-79	U	U
KOREA	C	12-22-79	C	C	7-1-78	U	U
MEXICO	C	9-15-75	U	U	U	U	U
PHILIPPINES	C	8-15-78	U	U	U	U	U
ANTIGUA	C	12-22-79	U	U	U	U	U
BELIZE	C	7-22-79	U	U	U	U	U
HONG KONG	C	3-8-76	7-8-67	1-1-76	1-1-69	5-15-77	U
ST.CHRISTOPHER-NEVIS	C	11-15-79	U	U	U	U	U

CA/VO - June 18, 1980

B. RECAPTURED CUBAN (SILVA) NUMBERS

1. Recaptured Cuban (Silva) numbers may be issued to those principal alien immigrant visa applicants born in independent countries of the Western Hemisphere, who registered with U.S. Consulates between July 1, 1968 and December 31, 1976, inclusive, and their spouses and children who are accompanying or following to join pursuant to 8 U.S.C. Sec. 1153(a)(9).

2. The reporting of demand for Recaptured Cuban (Silva) numbers; the allocation of numbers; and the establishing of the cut-off dates listed below follow the procedures outlined on page 1 of this bulletin, paragraph A.1., except that Silva allocations were made for demand received by May 10.

COUNTRY			
ARGENTINA	1-1-77	GUATEMALA	1-1-77
BAHAMAS	12-1-76	GUYANA	1-1-77
BARBADOS	1-1-77	HAITI	1-1-77
BOLIVIA	1-1-77	HONDURAS	1-1-77
BRAZIL	1-1-77	JAMAICA	1-1-77
CANADA	1-1-77	MEXICO	1-1-70
CHILE	1-1-77	NICARAGUA	1-1-77
COLOMBIA	1-1-77	PANAMA	1-1-77
COSTA RICA	1-1-77	PARAGUAY	1-1-77
CUBA	1-1-77	PERU	1-1-77
DOM. REPUBLIC	1-1-77	SURINAM	1-1-77
ECUADOR	1-1-77	TRINIDAD	1-1-77
EL SALVADOR	6-1-76	URUGUAY	1-1-77
GRENADA	1-1-77	VENEZUELA	1-1-77

CA/VO - May 19, 1980

414

INTERAGENCY TASK FORCE ON IMMIGRATION POLICY, STAFF REPORT, DEPARTMENTS OF JUSTICE, LABOR AND STATE, MARCH 1979

41.

CHAPTER XIV

IMMIGRANT VISA ALLOCATION: ALTERNATIVE APPROACHES

The question of visa allocation lies at the heart of our immigration law and policy. Proposals for changing the current system often focus on the wisdom of raising or lowering the overall numerical limitations. But, as more attention is paid to the need for reform, the issue increasingly becomes one of restructuring our system of allocating visas. The issue is whether we should maintain a system of visa allocation that primarily facilitates the entry of persons who have familial ties here (family reunification) or whether visa allocation should be based primarily on the needs of the nation as a whole.

These alternatives are more important than might be thought at first glance, since "who" will enter the United States may be as important as how many persons enter. Working in combination, the "who" and "how many" are the controlling factors in determining what impact immigration has domestically on the United States, and on the extent to which the United States responds to its obligations as a world power. The "how many" determines quantity, but the "who" determines the sex, age structure, fertility rates, and occupational skills of the immigrant population, ultimately determining the costs and benefits of that population. If, for example, the majority of immigrants were children, society would be responsible for their educational costs prior to their making any economic contribution. On the other hand, admitting only needed workers would insure an immediate contribution to our economic growth. (As discussed elsewhere the contributions of such workers must be measured against any negative effects they may have on the indigenous workforce.) At another extreme, admission of only older persons (55 years and over) would reduce the prospect of their economic contribution as well as their likely contribution to population growth. The question to be addressed here then is whether immigration policy should or, as a matter of practice, can be contoured to maximize achievement of other national policy goals.

Family reunification is currently the cornerstone of our immigration policy. Of the seven preferences, which define, limit and rank those eligible for the 290,000 numerically limited visas available annually, four, comprising 74 percent of the total visas, are reserved for close relatives of U.S. citizens and permanent residents. This is in addition to an unlimited number of visas which are available for the spouses, children and parents of U.S. citizens. The major argument for maintaining a heavy family reunification emphasis in the preference system is the humanitarian content of such a policy. Proponents argue that familial ties provide a good foundation for the integration of a new immigrant into society (assuming immigrants receive assistance from relatives who preceded them). Experience with the present law indicates that it produces a mix of immigrants that roughly mirrors the age, sex, marital status, and education of our native population. Although this mix is accidental, nevertheless it does appear to be favorable.[1]

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[1] A detailed description of the characteristics of recent immigrants appears elsewhere in this report.

The fifth preference is also criticized for triggering a "chain reaction" that goes beyond the family which initiated the immigration process. In other words, a family member may immigrate to the United States, become a citizen (after a 5 year minimum residency), and then petition to have his siblings (with their immediate families) immigrate under the fifth preference. But, the immigration chain does not necessarily stop there, as the sibling may have been accompanied by a spouse whose family remains in the country of origin. As a permanent resident alien, such a spouse can become a citizen, and in turn petition for his or her parents to immigrate to the United States, thereby triggering the entry of a new family line. Although having a certain logic this line of reasoning merely recognizes that the migratory chain is perpetual rather than limited to the immediate relatives of those persons already here.

As a result of the heavy reliance on family reunion, those without relatives in this country have very little chance of immigrating to the United States. In theory, every country is affected equally by the numerical restrictions of the preference categories. But, in practice, those nationalities that have the largest (recently arrived) populations within the United States have an advantage. Mexico, for example, fills its 20,000 annual limit and in addition sends a roughly equal number of immediate relatives who are outside numerical limitations. Without previous family connections, a country is unlikely to utilize fully the possible 20,000 annual visa allotments. Colombia, where the large demand for immigration to the United States is indicated by a major outflow of illegal migrants, has been able to send only about 5,000 legal immigrants annually.[2]

To qualify for a visa without familial ties or refugee credentials, immigrants must have skills which would enable them to receive a labor certification and to enter under the third, sixth, or nonpreference categories. As previously explained, 20 percent, or 58,000, of the 290,000 visas allotted worldwide go to the third and sixth preferences. These are used not only for the qualified workers but for their dependents as well. Hence fewer than 29,000 go to the workers themselves. Most nonpreference immigrants must also have labor certification and are allotted visas not used by the seven preferences. An average of 34,000 nonpreference visas were issued annually between 1967 and 1976, but heavy demand in the family preferences combined with the newly legislated worldwide system of numerical limitations has led the State Department to predict that issuance of nonpreference visas is unlikely in the next several years.

The final 6 percent of the annual immigrant visas issued go to refugees from Communist or Communist-dominated countries, and to those fleeing from the Middle East. However, the 17,400 available seventh preference visas are miniscule in number compared to the worldwide pool of refugees, many of them set adrift because of military and diplomatic activities of the United States (e.g., the Indochinese). Therefore, as discussed in detail elsewhere in the report, large numbers of refugees have traditionally been paroled into the United States. Some advocates of an immigration policy based solely on humanitarian concerns (largely family reunification) have proposed that the worker preferences be restructured to facilitate the entry of refugees rather than workers. Such an immigration policy would allocate roughly three-quarters of the visa numbers to relatives of persons in the United States and most of the remaining numbers to refugees. A small percentage (perhaps the 6 percent now allocated to refugees) would be set aside to permit the immigration of persons of exceptional merit or those with skills needed in the United States.

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[2] See Chapter III, "Who Has Entered: 1967-1976", for details regarding recent immigrants from Colombia.

Few other approaches to our immigration policy have been proposed. However, an alternative approach to visa allocation, one designed to benefit U.S. society as a whole, was recently proposed in a report for the National Commission for Manpower Policy entitled: "Manpower and Immigration Policies in the U.S.,"[3] written by David North and Allen LeBel (hereafter the "Manpower report").

The Manpower report acknowledged the validity of a humanitarian immigration policy, but suggested that that Nation's goals would be better met by the admission of a different mix of persons, stressing refugees rather than nonimmediate family members. It is also argued that U.S. immigration policy should have a closer linkage to U.S. manpower requirements. The Manpower report characterized an immigration visa as a "publicly generated good" which it asserted should be distributed in line with the interests of the whole society rather than the interests of specific families.

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[3] National Commission for Manpower Policy, Special Report No. 20, February 1978.

Specifically, the immigration policy proposed by the Manpower report envisages annual immigration targets between 300,000 and 500,000 with the annual total reflecting our unemployment rate and our perceived responsibility for refugees. Rather than seven preference categories as in the current system, the alternative model proposed three, the first numerically unrestricted for qualified immediate relatives of citizens; the second for needed workers and refugees; and the third for other relatives. The annual immigration quota would be distributed between the second and third preferences in response to prevailing conditions. If unemployment were low or there were labor shortages, the emphasis would be placed on the importation of workers. If an international crisis produced a wave of refugees, the emphasis would be placed on assisting them. If neither situation prevailed, more nonimmediate relatives would be admitted.

Relatives eligible under the new third preference would comprise those now eligible under the current first, second, and fourth preferences. The fifth preference, as it now exists, would be eliminated, permitting the admission of about 70,000 socially screened immigrants annually, without increasing overall immigration.

In challenging the emphasis on family reunification, the Manpower report assumes that there are clearly defined societal interests, that we can design and administer a system that can further them, and that the present system has not achieved these ends.

While these assumptions seem reasonable, each is subject to question. First, there are and will likely always be reasonable differences of opinion as to what the best interest of the society is. Moreover, in some relevant areas, such as population, there are no defined U.S. policies. Second, the number of visas available (290,000) are insignificant when compared with the size of our population (220 million), our labor force (101 million), our yearly expansion of the labor force (approximately 1.5 million) or even the estimated size of our stock and flow of illegal migrants (estimated in the range of 4 to 6 million and 500 to 800 thousand annually respectively). Thus David North, the senior author of the Manpower report, in an unpublished paper[4] subsequently prepared for the Task Force concluded that within the general confines of the existing immigration system "it makes little sense to develop a mechanism to admit a few more or a few less immigrant workers." The insignificance of "a few" or a variation of 100 thousand or so workers, however, was in comparison not only with the 200 thousand or so legal immigrant workers admitted annually, but also the 500 to 800 thousand annual flow of illegal aliens, which greatly reduces any impact of an annual 100 thousand variation in new workers. North argued that if there were a need to reduce the influx of alien workers because of labor market conditions (which he contends is the current situation) then illegal rather than legal immigration should be controlled. If illegal immigration could be controlled, North concluded that a system of flexible ceilings (for economic reasons) might be workable.

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[4] David S. North, "A Flexible Immigration Ceiling for the U.S.: An Exploratory Essay," November 1978.

A third alternative for allocating visas would be an international immigration lottery which would distribute a fixed number of visas randomly on a worldwide basis to eligible persons wishing to come to the United States. Preference would not be given to persons who have family or business connections in the United States. The available visas could be allocated with or without concern for their geographical distribution depending on the degree of random selection desired. The potential disadvantages of a lottery are that it might be administratively unmanageable and that it could increase the expectations of persons who presently know they do not qualify for immigration to the United States. Having had their expectations raised, these persons could decide to enter the United States illegally if they were unsuccessful participants in the lottery. This problem could perhaps be mitigated by requiring that successful applicants would have to present themselves within a very short period after notification to the U.S. consulate. Since notices would be issued throughout the year, applicants would endanger their chances of winning by entering the United States.

The United States, unlike Canada and Australia,[5] does not intentionally construct and utilize its immigration policy to accomplish "socially desirable national goals." Part of this can be attributed to the lack of defined and accepted national goals, however. Proponents of family oriented immigration contend that such a policy is at least not contradictory to national goals. Yet, the social benefits which accrue from the immigration and settlement of immigrants with family ties in the United States, although generally favorable, are an unplanned and unregulated result of the existing system. Whether this laissez-faire approach is appropriate for the United States at this stage of its economic, demographic, and social development or whether a more deliberately constructed and carefully regulated policy is necessary is the issue to be determined.

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[5] See another section of this report for a limited comparison of immigration policies of other nations.

42.

U.S. Immigration: A Policy Analysis

a Public Issues paper of
The Population Council

Charles B. Keely

3 Policy Issues

Legal Immigration and the Labor Force

The impact of legal immigration—in addition to illegal migration—on the labor force is a topic for debate. Currently, immigrants who wish to qualify for a worker preference (third and sixth preferences) and nonpreference applicants for a visa (see Table 2) require employment certification from the Department of Labor. (See Table 3 for a synopsis of major immigration law provisions.) The certification is supposed to testify that US workers are not available for the job in question and that the terms of employment meet prevailing conditions. The complex process involves the filing of a petition by the employer, with supporting documentation concerning the position and the employer's efforts at recruitment. The process has a number of drawbacks. Persons residing in the United States for other purposes (study, exchange programs, or even tourism) have the opportunity to scout the labor market. North and LeBel[50] cite a Government Accounting Office study that reviewed 442 certification cases. In 191 instances the applicants were in the United States, and 101 were already working at the job. Of the 101 at work, 42 had a nonimmigrant visa that permitted them to work, while the remaining 59 were apparently visa abusers or illegal migrants. The ability of nonimmigrants in the United States for education and training to adjust to immigration status also thwarts the purpose of foreign-student and foreign-exchange programs.

Labor certification is only a token attempt to protect the US labor market.

In fact, since labor certification is required only of persons not being admitted to join their families and by nonrefugees, it affects less than 10 percent of recent immigrants, whereas about 52 percent of immigrants are estimated to have joined the labor force within two years of arrival.[51] Labor certification is only a token attempt to protect the US labor market. Nevertheless, the concept is strongly supported by organized labor, which would oppose any suggestion to drop the program without other mechanisms to protect the labor market from undue competition by foreign nationals coming to the United States by virtue of their skills or a supposed labor shortage.

Immigration policy is a blunt instrument for fine tuning the needs of the US labor force.

The fact that the labor force impacts of immigration have heretofore been neglected in policymaking does not mean that immigration should now be increasingly subordinated to manpower policy. The proposal to gear immigration volume to unemployment rates has the virtue of simplicity, but is a blunt instrument for tuning such a complex arrangement as the workings of the job market. In addition to assuming a fairly static job market, it overlooks the fact that it requires over one million persons to produce a one percent change in unemployment rates. But suppose, for a moment, that the job market were static and the proposed scheme were administratively possible. Since about one-half of immigrants enter the labor force, to vary immigration levels between 300,000 and 500,000 per year, as proposed by North and LeBel,[23] would reduce unemployment by one-tenth of one percent at most.

I would propose dropping the worker preferences (third and sixth) entirely. Rather than trying to move toward greater subordination of immigration policy to manpower considerations or expansion of labor certification procedures, I suggest eliminating current methods of manpower recruitment through immigration.

Each of the two worker preferences now reserves 10 percent of the 290,000 ceiling, or a total of 58,000 visas. As proposed below, about 35,000 of these could be provided for refugees. The remaining 23,000 would be reserved for temporary migrants permitted to adjust status after working for the appropriate time, for persons who make substantial investments creating jobs in the United States (at a figure well above the current $40,000 investment requirement), and perhaps (if any visas remain) for "new seed" immigrants—those who do not qualify for a preference—who would still be required to get labor certification.

The present law's potential for encouraging brain drain from less developed sending countries would be reduced. The United States would no longer be recruiting highly skilled labor through its preference system, and the number and complexity of labor certifications for immigration would decline or be eliminated.

Family Reunion

Another issue in the reform of immigration laws is the scope of family relationships that qualify for a visa preference. The major objection voiced is to the fifth preference: brothers and sisters of US citizens over age 21. If the purpose of the relative preference, critics argue, is the reunion of families, such a degree of kinship should not warrant a visa preference.

The whole relative preference system is often seen not only as smacking of nepotism but also as containing an endless snowball effect, so that resident aliens and naturalized citizens could conceivably qualify huge numbers of immigrant applicants. Given overall ceilings, however, such snowball effects are regulated.

The policy choice seems to be the degree of cultural pluralism to be tolerated in immigration policy in general and in the preference system in particular. It might also be added that family links in the United States would appear to be a good starting point for successful integration into the newly adopted country.

Family ties in the United States seem to be a good starting ground for successful integration into the newly adopted country.

Family reunion should remain a cornerstone of US immigration policy. Ceilings effectively control any snowball effect. I would suggest retaining the current preferences, including the one for brothers and sisters of adult US citizens. The United States and our immigration laws can accommodate cultural traditions that value such kinship ties. Calling such family reunion policy nepotism is political rhetoric. Trying to pit national interests against family or individual interests as a policy framework seems to assume that individual welfare of citizens and strengthening the family unit are somehow at odds with other, unspecified national goals.

The preference system proposed in Table 4 would retain the current four family preferences at the level of 74 percent of the visas, with a fall down of unused visas to the next category. I do not propose changes in the percentages allotted to each preference, but there is room for some shifting depending on demand patterns. The proposed preference system would increase the visas in the refugee preference to about 50,000, or 17 percent of the total, while the remaining 9 percent, plus unused family preference visas, would be allocated to migrant labor adjustments. This preference system would continue to operate within the 290,000 visa ceiling, with no increase contemplated. The admission of the immediate family of citizens outside the ceiling would be continued. This amounts to about 100,000 immigrants a year, with no apparent reason to expect an increase. Thus, gross legal immigration would remain at 400,000 per year, offset according to recent estimates by about 100,000 to 120,000 foreign-born emigrants.

The proposed preference system would increase refugee visas from 17,400 to about 50,000, without raising total immigration ceilings.

Nonimmigrants and Adjustment of Status

Current law permits many people to come to the United States as nonimmigrants, sometimes for extended periods. In addition to the obvious groups, such as tourists and diplomats, are foreign students, exchange visitors, intracompany transferees of multinational corporations, representatives of the media, workers in international organizations, and highly skilled professionals in academic disciplines, the arts, sports, and so on. Many of these visa classes are permitted to adjust to immigrant status while in the United States.

The adjustment of status mechanism is a convenient and humane way to permit someone to obtain an immigrant visa without the formality of making several trips to a US consulate in a foreign country. On the other hand, the ability of those with more wealth to come to the United States to hunt for a job, or to frustrate the aims of student

Table 4 Proposed Preference System

1. First preference: Unmarried sons and daughters of US citizens.
   Not more than 20 percent.
2. Second preference: Spouse and unmarried sons and daughters of an alien lawfully admitted for permanent residence.
   20 percent plus any not required for first preference.
3. Third preference: Married sons and daughters of US citizens.
   10 percent plus any not required for first two preferences.
4. Fourth preference: Brothers and sisters of US citizens over age 21.
   24 percent plus any not required for first three preferences.
5. Fifth preference: Refugees.
   Not more than 17 percent.
6. Sixth preference: Migrant workers adjusting.
   9 percent plus any not required for the first five preferences.
7. Nonpreference: Any applicant not entitled to one of the above preferences (including investors, but not available for adjustment of status from a nonimmigrant visa).
   Any numbers not required for preference applicants.

and exchange programs by training in the United States and then remaining, complicates the role of the adjustment mechanism. The need is to retain the possibility of adjustment for the desirable reasons, while eliminating the abuses not intended by the policy.

Adjustment of status should be limited to immediate family of citizens, to those who qualify for a family preference, and to temporary migrant workers who qualify under the proposed program.

Adjustment of status should be limited to immediate family of citizens, to those who qualify for a family preference, or to temporary migrant workers who qualify under the program outlined earlier. In this way the humanitarian intent of the adjustment process can be maintained. The elimination of worker preferences and, therefore, of the opportunity for students, exchange visitors, and other nonimmigrants to adjust status on the basis of skills or education would both strengthen foreign student, training, and exchange programs and reduce the potential of any brain drain from developing nations. A bona fide family tie, however (e.g., marriage between an exchange visitor and a citizen), could result in adjustment.

Refugee Admittance

Three issues on refugee policy require attention. The first is the definition of who is eligible for a preference visa as a refugee. The current immigration law limits refugee status to those fleeing from a Communist-dominated country or the Middle East. A broader definition, in line with the UN protocol on refugees acceded to by the United States, is needed (see Table 5, pp. 72–75). The change in legislative definition has wide backing, but passage has been delayed by disagreement over other refugee issues.

The second issue is that persons receiving a seventh preference visa as refugees are technically not immigrants, but conditional entrants: they may adjust after two years to immigrant status. The thorough inquiry on applicants for visas and preference status should eliminate the need for this additional two-year trial period. Normally, the refugee still has to wait an additional five years to be eligible for citizenship, which involves another check.

The third issue involving refugees is the most difficult. Because of the immigration law's narrow definition of a refugee, and more especially because of the lack of a refugee preference before 1965 and a present limit of 6 percent on visas for seventh preference, large numbers of refugees cannot be admitted through normal immigration channels. However, a provision in immigration law, called parole power, permits the Attorney General to allow entry for up to two years of any person whose admission is deemed to be in the national interest. This use of parole power was envisaged as an emergency measure to allow such things as medical treatment for victims of accidents at sea. Nonetheless, it has been invoked, frequently at the urging of members of Congress, to admit large numbers of Hungarians, Cubans, Indochinese, and smaller groups of victims of political persecution. There has been much uneasiness among various Attorneys General and some members of Congress about the legality of this broad-stroke use of the parole power.

US immigration law requires a broader definition of who may qualify for refugee status.

Some congressional members also are unhappy with such broad administrative discretion outside the immigration policy set by a Congress that is very aware of its constitutional prerogatives. The fact of delegation of broad discretionary powers (assuming that parole in fact legally confers power on the Attorney General for such large group admissions) has been driven home since, in each case of large-scale use of parole, legislation is necessary to grant immigrant status to the parolees. Since the parole status lasts up to two years, and the original purpose of parole envisaged emergency, temporary presence with a return, no general provision exists to adjust status from parolee to immigrant. Thus, special legislation has been introduced by which Congress in effect has been asked to affirm the parole action of the Executive. Given the resettlement programs, the numbers involved, and the political nature of refugee movement, Congress really had no alternative but to acquiesce.[33]

The policy problem, therefore, is to devise a refugee system that (a) provides a reasonable definition of a refugee; (b) is generous enough to permit the United States to take its fair share annually of victims of war, political tyranny, or persecution; (c) is part of an overall immigration system; (d) is flexible enough for officials to react to emergency situations, but with congressional approval before the fact. This last stipulation would apply to situations that require exceeding an annual allotment for refugee resettlement but that seem to Congress and the President to be in the national interest or in keeping with a doctrine on human rights.

If refugee visas are increased to 50,000, regular funding for resettlement activities should be assured.

Such a system could more easily be implemented if (a) the UN definition or a variation of it becomes US law; (b) about 50,000 of the 290,000 visas authorized worldwide are reserved for refugees, as proposed above; (c) admissions in excess of 50,000 refugees a year require prior congressional approval. Finally, it is not well known outside government that the vast bulk of the resettlement and integration of Hungarian, Cuban, Indochinese, and a number of other refugee groups was carried out by voluntary immigrant aid organizations, both religious and nonsectarian. Thus, not a US government agency but this extraordinary network of men and women performs the very difficult task of resettlement. The federal government has provided reimbursement for resettlement on an ad hoc basis. If the decision is made to increase refugee visas to the level of 50,000 a year, funding should be provided on a regular and secure basis for the services that these organizations, with their grass-roots, community bases, perform far better than any federal agency could.

If worker preferences are dropped from immigration law, the general outlines of the proposed refugee policy could be accommodated. Since some of the visas, freed by elimination of the labor preferences would be allocated to refugees, enhancement of the refugee resettlement goal could be achieved without increasing the worldwide ceiling. A bill (HR 7175, 95th Congress, 1st Session) similar in form to the outlines presented above has been the basis of hearings at which the Executive and voluntary agencies have testified. Although technical issues remain, a consensus seems to be developing and should be pursued, given the broad support for the American tradition of accepting victims of political repression and natural disaster.

Pluralism

The issues of ethnic political organization and language maintenance are old themes in American history. The traditional solution has been to require English-language usage, particularly through language assimilation in schools. The current policy of bilingual and bicultural education has raised again the question of language maintenance. Even further, the large number of Spanish-language residents and citizens raises the possibility of a bilingual nation. Feelings are strong on both sides of this issue.

We must reaffirm that ethnic discrimination has no place in US immigration policy. Thus, the growing political power of Spanish-origin groups, especially among Mexican-American and Chicano organizations, should not spill over into discriminatory immigration regulations reminiscent of the nativist policies embodied in the national origins quota system.

The growing political power of Spanish-origin groups should not spill over into discriminatory immigration regulations.

I agree with the viewpoint of North and LeBel, as presented in their study for the Manpower Com-

Table 5
Proposals on Immigration, Refugees, and Illegal Migration Policy

Provisions	Proposal	Differences from Current Policy
Worldwide Ceiling	290,000.	No change.
Exempt from Ceiling	Spouse, children, and parents of adult US citizens.	No change.
Preferences	As outlined in Table 4.	Drop labor preferences; increase refugee preference.
Per-Country Ceiling	No more than 20,000 visas for preferences 1 to 4 and nonpreference. Refugee visas and migrant workers adjusting would be without regard to national origin.	Under current law 20,000 ceiling includes all preference categories. Proposal would add refugees and migrant workers adjusting to immediate family members as exempt from 20,000 national ceiling.
Adjustment of Status	Limited to classes exempt from ceiling, relative preferences, and qualified migrant workers.	Current adjustment permitted under all preferences and nonpreferences. Limiting adjustment of status as proposed is not based on what nonimmigrant visa is held (e.g., prohibiting any adjustment from a student visa) but on elimination of labor- and skill-related preferences.
	Those qualified for a current nonimmigrant visa (e.g., an exchange visitor or student) would not be permitted to come under proposed migrant worker program. For example, a foreign physician coming for internship or resident training or a distinguished professor or researcher would be prohibited from entering the US under the proposed temporary worker program.	Requires conforming legislation so that proposed temporary migrant program does not become a subterfuge for gaining immigration status by exchange visitors or distinguished persons in the professions who qualify for current nonimmigrant status. The proposals envisage prohibition of adjustment by such exchange visitors unless they have a qualifying family relationship.
Labor Certification	Temporary labor program: required either for individuals or for region using tripartite collaboration of organized labor,	Organize consultation mechanism for review before Labor Department authorizes temporary labor. Temporary

Provisions	Proposal	Differences from Current Policy
	business, and the Department of Labor.	migrants admitted to work in given occupation in given region.
	Other nonimmigrants: continue current certification procedures.	No change.
	"New-seed immigrants" (applicants not qualifying for family or refugee status or under migrant labor program): if decision is to permit use of nonpreference visas for new-seed applicants, labor certification as currently required should be continued.	No change in current procedures, if new-seed immigrants are permitted.
Transition Period	Those currently registered and approved for worker (3rd and 6th) preferences and nonpreferences ("in the pipeline") could be accommodated by using proposed 6th preference until migrant workers could qualify (at least two years from beginning of program) and nonpreference numbers.	Phase out current preference system, as proposed.
Refugees	17 percent per year could receive immigrant status on approval of refugee visa (i.e., drop conditional entry approach of current 7th preference).	Increase refugee preference from 6 to 17 percent. Refugee preference receives immigrant visa, not conditional entry, which requires extra two-year wait for immigrant status.
	Admission beyond the 17 percent requires prior legislation.	Limit parole power of Attorney General to small groups or individuals who are not refugees, for emergency reasons (e.g., medical treatment). All refugees over the 17 percent authorized would require prior legislation to exceed 290,000 ceiling.

Table 5 (continued)

Provisions	Proposal	Differences from Current Policy
	Adapt definition of refugee along lines of UN protocol (e.g., "any person who is outside any country of his nationality or, in the case of a person having no nationality, is outside the country in which he last habitually resided, and who is unable or unwilling to return to, and is unwilling or unable to avail himself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership of a particular social group or political opinion."–HR 7175, Section 2, 95th Congress, 1st Session)	Change definition in law.
Illegal Migration	Temporary labor program: approval to work in particular job category and region of country for specified period using tripartite consultation. Temporary workers permitted to bring family for work period; entitled to all social benefits of a resident alien except citizenship or unemployment benefits beyond visa; required to pay state and local taxes, including Social Security; permitted to adjust to	Temporary workers are permitted under current legislation (H-2 worker program). Develop administrative mechanisms and limits of program as proposed.

mission: "The immigration law should continue to be, as it has been since 1965, oblivious to such factors as color, religion, and language. This is the towering strength of the immigration law (which also has many weaknesses), and it should be retained at all costs."[84]

Provisions	Proposal	Differences from Current Policy
	immigrant after working 15–25 months in five consecutive years (or some variation of this work requirement).	
	Sanctions against employers for hiring illegal migrants.	Remove "Texas Proviso," which specifically exempts employment as an act of harboring an illegal migrant. Prohibit such hiring as part of labor code.
	Focus on current labor law enforcement rather than making employer sanctions the priority item.	Requires administrative decision on concentration of resources. Increased authorizations for labor law enforcement.
	Amnesty for illegal migrants who entered before 1 January 1977 (or some later date if deemed necessary for administrative purposes).	Update Section 249 of immigration law from 1948 to 1977, thereby permitting record of lawful admission to be created assuming minimal criteria are met.
	Continue border enforcement at least at current levels. Other proposals not discussed merit adoption (e.g., more focused enforcement on major ports of illegal entry; right to impound vehicles used in smuggling operations; funding for fraudulent documents laboratory and capabilities in the Immigration and Naturalization Service).	Administrative decisions on use of resources. Legislative authorization where required (e.g., seizure of smugglers' vehicles) to upgrade enforcement. Emphasis on border prevention. Increased authorization for INS.

The analysis and options presented in Part 3 result in an immigration policy that blends continuity with some marked departures from current law. Table 5 contains a summary of the main features of the legislative proposals and a brief commentary on the similarities and differences between these proposals and the immigration law presently in force.

Conclusion

The purpose of this Public Issues paper has been to review the development of immigration policy, to analyze the major policy stances currently competing to influence legislation, and to review the major issues and suggest policy options. The policy review and especially the proposals presented in Part 3 are meant to provide a fairly comprehensive legislative framework to address the reform of immigration policy.

The review indicates that there are continuities in the historical development of immigration policy. The themes of acceptance and protectionism have each been manifested throughout the history of immigrant admissions and policies. Each theme has been expressed in a variety of ways and each is reflected in the current limited but generous policy that focuses on humanitarian goals, but with regard for protecting the labor force and the health and safety of Americans.

The very persistence of the two themes, joined with the interdependence of issues in today's world, means immigration policy is complex and far-ranging in its domestic and foreign relations implications. Naturally enough, many groups maintain or have newly discovered an interest in immigration policy. The complexity of the issues, of the law and its administration; the variety of implications; the diversity of interest groups; and the emotional nature of immigration as a national tradition and core element in the national self-image, all work against coming to a consensus on even a workable, not to say perfect, immigration policy.

The nation is at a juncture where the need for review is widely agreed upon. Interest groups are aware and articulate but generally open to discussion with one another and even to compromise. How long this state of affairs will hold is hard to predict. Thus, the Select Commission on Immigration and Refugee Policy is welcome.

This Public Issues paper has been written as a contribution to the national discussion on immigration policy to be concentrated in the Select Commission. It is hoped that the discussion of issues and presentation of proposals will provide options for new immigration legislation.

C. ADMINISTRATIVE STRUCTURE

43.

IMMIGRATION LAW AND PRACTICE

JACK WASSERMAN

of the New York, Pennsylvania,
and District of Columbia Bars

THIRD EDITION

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Appendix A

HISTORICAL OUTLINE OF MAJOR UNITED STATES IMMIGRATION STATUTES

ACT	POPULAR NAME	STATUTORY REFERENCE	GENERAL PROVISIONS
JUNE 25, 1878	ALIEN AND SEDITION ACT	1 Stat. 570	Empowered President to deport dangerous aliens. Statute expired June 24, 1900.
	IMMIGRATION ACT OF 1862	12 Stat. 340	Prohibited importation of oriental slave labor.
MARCH 3, 1875 FIRST QUALITATIVE IMMIGRATION ACT	1875 IMMIGRATION ACT	18 Stat. 477	Barred entry of prostitutes, alien convicts.
MAY 6, 1882 (FIRST CHINESE EXCLUSION ACT)	CHINESE EXCLUSION ACT	22 Stat. 58	Barred Chinese laborers for ten years,amended and extended until 1943. Repealed by P. L. 199, 78th Cong. 1st Sess.
AUGUST 3, 1882	IMMIGRATION LAW OF 1882	22 Stat. 214	Imposed head tax of 50¢. Barred entry of lunatics, idiots, convicts and those liable to become public charges. Administered by Secretary of Treasury.
FEBRUARY 26, 1885	ALIEN CONTRACT LABOR LAW	23 Stat. 332	Barred contract laborers. Encouraging aliens to enter for labor unlawful and subject to $1,000.00 fine.
OCTOBER 19, 1888 (FIRST DEPORTATION LAW)		25 Stat. 566	Deportation of contract laborers within one year authorized.

ACT	POPULAR NAME	STATUTORY REFERENCE	GENERAL PROVISIONS
MARCH 3, 1891	IMMIGRATION LAW OF 1891	26 Stat. 1084	Inadmissible class increased to include those suffering from loathsome or contagious disease, polygamists, paupers, those whose passage was paid by another and aliens convicted of crimes involving moral turpitude. Deportation authorized with one year statute of limitations.
FEBRUARY 14, 1903	COMMISSIONER-GENERAL OF IMMIGRATION PLACED UNDER DEPARTMENT OF COMMERCE AND LABOR		
MARCH 3, 1903	IMMIGRATION ACT OF 1903	32 Stat. pt. 1 p. 1213	Inadmissible class increased to include epileptics, those insane within 5 years of entry or who had two attacks of insanity, beggars, anarchists and those who import women for prostitution. Statute of limitations increased to 3 years.
JUNE 29, 1906	NATURALIZATION ACT OF 1906	34 Stat. 596	Basic naturalization act in force from 1906 to 1940. Bureau of Immigration and Naturalization established.
FEBRUARY 20, 1907	IMMIGRATION ACT OF 1907	34 Stat. pt. 1 p. 898	Inadmissible class increased to include imbeciles, feeble-minded persons, tubercular aliens, those suffering from physical or mental defects affecting ability to earn a living, those admitting crimes involving moral turpitude, women coming for an immoral purpose, and unaccompanied children under 16.

ACT	POPULAR NAME	STATUTORY REFERENCE	GENERAL PROVISIONS
FEBRUARY 5, 1917	IMMIGRATION ACT OF 1917	39 Stat. 874	Literacy test prescribed for those over 16. Excludable class additions: Persons of constitutional psychopathic inferiority, men entering for immoral purposes, chronic alcoholics, stowaways, vagrants, those with one attack of insanity. Barred zone excluded Asiatics and Hindus. Deportation statute of limitations increased to 5 years except for those who commit crime involving moral turpitude within 5 years who are sentenced for one year imprisonment, those sentenced for a year more than once for crimes involving moral turpitude, those advocating overthrow of the government by force and violence, those practicing or connected with prostitution. In the latter cases there was no statute of limitations.
OCTOBER 16, 1918 (AMENDED JUNE 5, 1920 AND JUNE 28, 1940)	ANARCHIST ACT OF 1918	40 Stat. 1012 41 Stat. 10 54 Stat. 673	Provision made for exclusion and deportation of alien anarchists and radicals.
MAY 22, 1918	PASSPORT ACT OF 1918	40 Stat. 559	Prevented departure or entry of aliens without authorization or documents.
MAY 10, 1920	DEPORTATION ACT OF 1920	41 Stat. 593	Provision made for deportation of those convicted of espionage and certain wartime offenses.

ACT	POPULAR NAME	STATUTORY REFERENCE	GENERAL PROVISIONS
MAY 29, 1921	FIRST QUOTA LAW	42 Stat. 5	Annual immigration limited to (350, 000) 3% of national origin of aliens in United States in 1910.
MAY 26, 1924	NATIONAL ORIGINS ACT (JOHNSON BILL), IMMIGRATION ACT OF 1924	43 Stat. 153	Reduced annual quotas to 2% of national origin of aliens in United States in 1890 (154, 000). Minimum for each nationality - 100. Consular visas abroad required. Aliens ineligible to citizenship excluded. Those entering without visas or overstaying deportable without time limitation.
JUNE 28, 1940	ALIEN REGISTRATION ACT OF 1940 (SMITH ACT)	54 Stat. 670	Required registration and fingerprinting of aliens. Past membership in subversive organizations proscribed. Grounds of deportation increased. Provision made for suspension of deportation on grounds of serious economic detriment.
JUNE 14, 1940	REORGANIZATION PLAN V, SEC. 1 TRANSFERRED FUNCTIONS TO ATTORNEY GENERAL	54 Stat. 230	Immigration functions transferred from Secretary of Labor to Attorney General. Board of Immigration Appeals created August 30, 1940.
OCTOBER 14, 1940	NATIONALITY ACT OF 1940	54 Stat. 1137	Nationality, naturalization, denaturalization and expatriation laws codified and expanded.
DECEMBER 17, 1943		57 Stat. 600	Chinese exclusion laws of 1882 as amended repealed.

ACT	POPULAR NAME	STATUTORY REFERENCE	GENERAL PROVISIONS
JUNE 25, 1948	DISPLACED PERSONS ACT	62 Stat. 1009	Provision made for entry of 341,000 refugees displaced during World War II.
ACT OF SEPTEMBER 22, 1950	INTERNAL SECURITY ACT OF 1950	64 Stat. 987	Increased grounds of exclusion and deportation of subversives, deportation authorized to any country willing to accept an alien except where he would be subject to physical persecution. Annual address reporting required of aliens.
AUGUST 7, 1953	REFUGEE RELIEF ACT OF 1953	67 Stat. 400	205,000 visas authorized for World War II refugees.
JUNE 27, 1952	McCARRAN-WALTER ACT OR IMMIGRATION AND NATIONALITY ACT OF 1952	66 Stat. 163 (P.L. 82-414)	Immigration and nationality statutes codified. National origins provisions retained. Minimum quota for any quota area 100. No limitation upon Western Hemisphere immigration. Race eliminated as a complete bar to immigration. Preference system established. Grounds of exclusion and deportation increased. Suspension of deportation requires exceptional and extremely unusual hardship.
OCTOBER 3, 1965	1965 AMENDMENTS TO IMMIGRATION AND NATIONALITY ACT	79 Stat. 911 (P.L. 89-236)	National origin provisions repealed. Annual Eastern Hemisphere ceiling of 170,000 specified with annual per country limitation of 20,000 and colonial limitation of 200. Western Hemisphere limited for first time to annual quota of 120,000 with no country limitation or preference system. New preference system adopted with labor clearance requirement.

ACT	POPULAR NAME	STATUTORY REFERENCE	GENERAL PROVISIONS
APRIL 7, 1970		84 Stat. 116 (P. L. 91-225)	Provision made for entry for 90 days for fiancees or fiances of American citizens and for intercompany transferees 8 U.S.C. 1101(a)(15)(K), (L). Exchange visitor law amended 8 U.S.C. 1182(e).
OCTOBER 12, 1976	HEALTH PROFESSIONAL EDUCATIONAL ASSISTANCE ACT OF 1976 AS AMENDED ON AUGUST 1, 1977	90 Stat. 2243, 2300 (P. L. 94-484) 91 Stat. 383, 395 (P. L. 95-83)	Foreign medical graduates excludable unless they pass Parts I & II of National Board of Medical Examiners Examination (VQE) or equivalent examination, ineligible for H-2 or H-3 status and ineligible for no objection waiver of 212(e). Restricts entry of foreign medical graduates as exchange visitors.
OCTOBER 20, 1976	THE IMMIGRATION AND NATIONALITY ACT OF 1976	90 Stat. 2703 (P. L. 94-571)	Extended per country limitation of 20,000, adjustment under Sec. 245 (8 U.S.C. 1255) and preference system to Western Hemisphere natives. Colonial limitation raised to 600. Relief under Sec. 245(c) [8 U.S.C. 1255(c)] denied to those who work without authorization after January 1, 1977.

ACT	POPULAR NAME	STATUTORY REFERENCE	GENERAL PROVISIONS
APRIL 7, 1970		84 Stat. 116 (P. L. 91-225)	Provision made for entry for 90 days for fiances or fiancees of American citizens and for intercompany transferees 8 U. S. C. 1101(a)(15)(K), (L). Exchange visitor law amended 8 U. S. C. 1182(e).
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OCTOBER 20, 1976	THE IMMIGRATION AND NATIONALITY ACT OF 1976	90 Stat. 2703 (P. L. 94-571)	Extended per country limitation of 20,000, adjustment under Sec. 245 (8 U. S. C. 1255) and preference system to Western Hemisphere natives. Colonial limitation raised to 600. Relief under Sec. 245(c) [8 U. S. C. 1255(c)] denied to those who work without authorization after January 1, 1977.
OCTOBER 5, 1978	WORLD-WIDE CEILING LAW	92 Stat. 907 (P. L. 95-412)	Combines Eastern and Western Hemisphere quotas creating a world-wide ceiling. Select Commission on Immigration and Refugee Policy established.

ACT	POPULAR NAME	STATUTORY REFERENCE	GENERAL PROVISIONS
OCTOBER 5, 1978	LAW FACILITATING IMMIGRATION AND NATURALIZATION OF ADOPTED CHILDREN	92 Stat. 917 (P. L. 95-417)	Authorizes adoption of more than two children. Equalized naturalization requirement for adopted children with those of natural children.
OCTOBER 10, 1978	REPEAL OF CERTAIN EXPATRIATING PROVISIONS OF THE IMMIGRATION AND NATIONALITY ACT	92 Stat. (P. L. 95-432)	8 U. S. C. 1401(b)(c) and (d), 1481(a)(5), (8), 1482, 1484, 1485, 1486 (1976) repealed.
OCTOBER 30, 1978	LAW EXCLUDING AND DEPORTING PERSECUTORS	92 Stat. (P. L. 95-549)	Amends 8 U. S. C. 1182(a) 1182(d)(3), 1241(a) and 1243(h) and 1244(a) (1976) to exclude, deport, deny voluntary departure, stays of deportation upon ground of persecution and waiver of temporary admission to aliens involved in persecution of any person because of race, religion, national origin or political opinion
NOVEMBER 2, 1978		92 Stat. (P. L. 95-579)	Amends 8 U. S. C. 1432 to waive illiteracy for naturalization purposes for aliens over 50 years of age who have 20 years lawful residence on date of filing naturalization petition.
NOVEMBER 2, 1978	LAW FOR SEIZURE OF VEHICLES USED IN SMUGGLING	92 Stat. (P. L. 95-582)	Amends 8 U. S. C. 1324 (1976) to authorize the seizure of vehicles utilized in smuggling aliens.

44.

From

IMMIGRATION LAW AND PROCEDURE

Revised Edition

CHARLES GORDON

Practicing Attorney, Washington, D.C.
Formerly General Counsel, Immigration and Naturalization Service
Adjunct Professor of Law, Georgetown University Law Center

and

HARRY N. ROSENFIELD

Practicing Attorney, Washington, D.C.

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MATTHEW
BENDER

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AGENCIES OF ENFORCEMENT

§ 1.6 General Considerations

§1.6a Allocation of responsibilities

The major enforcement responsibilities under the immigration laws are assigned to the Attorney General. It is the Attorney General's job to guard the frontiers, to determine the admissibility of those who seek to enter, and to expel aliens not entitled to remain in the United States. The Attorney General discharges these responsibilities through the Immigration and Naturalization Service, a division of the Department of Justice.

A second enforcement agency is the Secretary of State, acting through the Department of State's Visa Office and the United States consuls stationed all over the world. It is the responsibility of these officials, chiefly the consuls, to deter-

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[20] Wong Wing v. U.S., 163 U.S. 228, 16 S.Ct. 977, 41 L.Ed. 140 (1896). *See §5.1 (2)*.

[21] U.S. v. Ju Toy, 198 U.S. 253, 25 S.Ct. 644, 49 L.Ed. 1040 (1905); Yee v. Barber, 210 F.2d 613 (9th Cir. 1954), cert. den. 347 U.S. 988.

[22] Ng Fung Ho v. White, 259 U.S. 276, 42 S.Ct. 492, 66 L.Ed. 938 (1922). *See §8.29b*.

mine in the first instance the admissibility of aliens who seek to enter the United States and to issue visas to those found eligible for entry. However, the issuance of a visa is only a preliminary determination which can be vetoed by an immigration officer at a port of entry in the United States. This bifurcation of duties between the Departments of State and Justice has been criticized and there have been proposals to merge all immigration responsibilities in a single agency.[1] However, the dual system of control remains a feature of the present law.

The third enforcement agency is the United States Public Health Service, in the Department of Health, Education, and Welfare, which is responsible for the physical and mental examination of aliens seeking to enter the United States. HEW also has responsibilities in connection with the immigration of foreign doctors.

Finally, important responsibilities are now reposed in the Department of Labor, acting through its Employment and Training Administration. Immigrants who seek to enter the United States to perform labor, except refugees and certain relatives of American citizens or of lawful resident aliens, cannot come unless they first get a certification from the Employment and Training Administration that workers are unavailable to perform such labor and that their entry will not adversely affect wages and working conditions in the United States.[1a]

§1.6b History

The year 1882 marks the beginning of true federal enforcement. Before 1875, as we have seen in §1.2, the Federal Government was not concerned with restrictions. An 1864 statute had established a commissioner of immigration in the State Department for the purpose of encouraging immigration, but this statute was repealed in 1868.[2] Consequently there was no federal enforcement agency. With the adoption of the first general immigration legislation in 1882,[3] the era of federal control began. The 1882 Act charged the Secretary of the Treasury with administrative responsibility, but the duties of enforcement actually were performed by state boards or officers designated by him.

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[1] Pres. Comm. Report, p. 131 et seq.; Report of Commission on Government Security (1957), p. 572; Rosenfield, "Necessary Administrative Reforms in Immigration and Nationality Act of 1952," 27 Fordham L. Rev. 145 (1958).

[1a] See Chavez v. Freshpict Foods, 456 F.2d 890, (10th Cir. 1972), cert. den. 409 U.S. 1042 (1972)(individuals claiming economic harm cannot sue employer alleged to violate statute by employing illegal aliens).

Enforcement by a federal agency really was launched in 1891, when Congress established the office of Superintendent of Immigration in the Treasury Department.[4] In 1895 the Superintendent's title was changed to Commissioner General of Immigration.[5]

Immigration functions remained in the Treasury Department until 1903, when Congress transferred them to the Department of Commerce and Labor.[6] The basic naturalization statute of 1906 consolidated immigration and naturalization functions in a single Bureau of Immigration and Naturalization.[7] In 1913 the Bureau was transferred to the newly established Department of Labor and its functions were split between a Bureau of Immigration, headed by a Commissioner General of Immigration, and a Bureau of Naturalization, headed by a Commissioner of Naturalization.[8]

Immigration functions resided in the Department of Labor between 1913 and 1940. A major reorganization in 1933 again combined immigration and naturalization functions into the

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[2] Act of July 4, 1864, 13 Stat. 385, repealed by Sec. 4, Act of March 30, 1868, 15 Stat. 58.

[3] Act of Aug. 3, 1882, 22 Stat. 214.

[4] Sec. 7, Act of March 3, 1891, 26 Stat. 1084.

[5] Sec. 1, Act of March 2, 1895, 28 Stat. 780.

[6] Act of Feb. 14, 1903, 32 Stat. 825. See also Act of April 28, 1904, 33 Stat. 591.

[7] Act of June 29, 1906, 34 Stat. 596.

[8] Sec. 3, Act of March 4, 1913, 37 Stat. 737.

Immigration and Naturalization Service.[9] The chief of this Service was a Commissioner of Immigration and Naturalization, responsible to the Secretary of Labor.

Motivated by the deepening national emergency which eventually led to our involvement in World War II, President Roosevelt in 1940 proposed to Congress that the Immigration and Naturalization Service be transferred to the Department of Justice.[10] This plan was not disapproved by Congress and became effective June 14, 1940. From June 14, 1940 to the present date the Immigration and Naturalization Service has been an arm of the Department of Justice, under the Attorney General.[11]

The Department of State's participation in immigration responsibilities was inaugurated during World War I. On July 26, 1917, the Departments of State and Labor issued a Joint Order requiring all aliens seeking to enter the United States to have their passports visaed by American consuls overseas.[12] This wartime measure, which inaugurated the visa requirement for entry, gained legislative recognition in 1918.[13] However, consular activity on a permanent basis was inaugurated by the basic quota law of 1924, which required aliens seeking to enter the United States to obtain visas from United States consuls stationed abroad.[14] This requirement is continued in the Act of 1952.[15]

The first supervisory agency over consular visas established in the Department of State was a Visa Section in the Bureau of Citizenship. On August, 13, 1918, this section became the Visa Office in the Division of Passport Control. In 1919, this Office began to operate as an independent unit and it was renamed the Visa Division on January 1, 1931. The 1952 Act established a Bureau of Security and Consular Affairs in the Department of State, headed by an administrator, and transferred the functions of the Visa Division to one of the component units of that Bureau to be known as the Visa Office.[16] In 1977 the parent agency was renamed as the Bureau of Consular Affairs, and its head was designated as an Assistant Secretary of State.[16a]

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[9] Executive Order 6166, June 10, 1933.

[10] Reorganization Plan V, May 22, 1940, 5 F.R. 2223.

[11] See Sec. 103, Act of 1952, 8 U.S.C. 1103.

[12] *Laws Applicable to Immigration and Nationality*, 1953 Edition, Government Printing Office, p. 1042.

[13] Act of May 22, 1918, 40 Stat. 559.

[14] Secs. 2, 7, and 13, Act of May 26, 1924, 43 Stat. 153, 156, 161. See also Sec. 30, Alien Registration Act of 1940, 54 Stat. 673.

[15] Secs. 211, 221, and 212(a)(26), Act of 1952, 8 U.S.C. 1181, 1201, 1182(a)(26).

Participation of the United States Public Health Service in medical examinations of entering aliens began in 1891, when it was known as the Marine Hospital Service.[17] The Immigration Act of 1917 was the first legislation describing this agency as the United States Public Health Service.[18] Until 1925 all medical examinations were conducted in the United States. Since 1925, medical examinations have been conducted by doctors of the Public Health Service stationed at consulates in many of the countries from which aliens seek to come to the United States.

The Department of Labor's early responsibility for immigration enforcement has been described above. That Department resumed a major role in the enforcement picture in 1965, when the statute was amended to preclude the entry of aliens seeking to perform labor unless the Secretary certifies that American workers are unavailable for such labor and that their entry would not adversely affect wages and working conditions in this country.[19]

§1.6c Liaison

The Commissioner of Immigration and Naturalization and the Assistant Secretary of State of the Bureau of Consular Affairs are directed to maintain liaison with all internal security agencies and with one another to promote uniform and effective enforcement of the law.[20]

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[16] Sec. 104, Act of 1952, 8 U.S.C. 1104.

[16a] *See §1.12a.*

[17] Sec. 8, Act of March 3, 1891, 26 Stat.1084.

[18] Sec. 16, Act of Feb. 5, 1917, 39 Stat. 885.

[19] Sec. 212(a)(14), Act of 1952, 8 U.S.C. 1182(a)(14), as amended by Sec. 10, Act of October 3, 1965, P.L. 89-236, 79 Stat. 911. *See §3.6.*

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[20] Sec. 105, Act of 1952, 8 U.S.C. 1105.

[1] Sec. 103(a), Act of 1952, 8 U.S.C. 1103(a).

[2] Id. See Cartier v. Secretary of State, 506 F.2d 191 (D.C. Cir. 1974), cert. den. 421 U.S. 927 (1975) (court found it unnecessary to decide whether Attorney General's determination on nationality issue could overrule prior determination by Secretary of State (*see §§1.11, 11.9a*)).

[3] Id.

45.

NECESSARY ADMINISTRATIVE REFORMS IN THE IMMIGRATION AND NATIONALITY ACT OF 1952

HARRY N. ROSENFIELD[*]

IT is probably accurate to say of the Immigration and Nationality Act of 1952[1] that few laws enacted by the Congress are longer and more complex,[2] or have been subject to greater and more widespread criticism by successive Presidents of the United States,[3] by both national political parties[4] and by individual citizens and representative American organizations.[5] This article, however, will not deal with the law's basic and highly controversial substantive policies, such as the national origins system, quotas, or the criteria for selecting prospective immigrants. Instead, it will be limited to seven specific administrative and procedural areas in which the organized legal profession has reached a general consensus as to the nature of the substantial reforms that are necessary and desirable.

For convenience, these seven proposals are grouped into three major categories: Organizational Structure; Administrative Hearings; and Judicial Review.

I. ORGANIZATIONAL STRUCTURE FOR THE ADMINISTRATION OF THE LAW

The issue here considered is the organizational structure established by statute for the allocation of governmental functions in the field of

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[*] Member of the District of Columbia and New York Bars.

[1] Immigration and Nationality Act of 1952, 66 Stat. 163, 8 U.S.C. § 1101 (1952) (hereinafter cited as Act of 1952).

[2] The act is subdivided into 143 sections, a great number of which are further subdivided into subsections, paragraphs, subparagraphs, and clauses. For example, the very first section, § 101, which deals with "Definitions," occupies 6 and 2/3 pages of the official law print. Section 101 consists of seven subsections, one of which includes a proviso. Six of the seven subsections are divided into a total of 60 paragraphs, of which three have provisos, and three an indefinite extension of the "definition." Six of the 60 paragraphs are further divided into a total of 26 paragraphs, of which two include exceptions and three include provisos. Five of the 26 subparagraphs are further subdivided into a total of 15 clauses, of which two include exceptions. Some of the definitions relate to the entire act, some apply only to Titles I and II, and others still apply only to Title III.

Section 101 also includes 21 cross-references to other specified parts of the act, one to all other parts of the act, three to other acts and one to all other acts.

[3] President Truman vetoed the bill. H.R. Doc. No. 520, 82d Cong., 2d Sess. (1952). President Eisenhower attacked the act during his first presidential campaign (see Rosenfield, The Prospects for Immigration Amendments, 21 Law & Contemp. Prob. 401, 404-05 (1956)), and sent special messages to Congress recommending substantial amendments. H.R. Doc. No. 329, 84th Cong., 2d Sess. (1956); H.R. Doc. No. 85, 85th Cong., 1st Sess. (1957).

[4] See Rosenfield, supra note 3, at 403-04.

[5] Cf. Heckman, Our Immigration Laws, A Continuing Affront to the Administrative Procedure Act, 41 Geo. L.J. 364 (1953); President's Commission on Immigration and Naturalization, Whom We Shall Welcome c. 1 (1953) (hereinafter cited as Pres. Com. Rep.).

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Fordham Law Review, v. 27, 1958: 145-186.

immigration, not the manner in which the immigration law is being administered by the Departments of State and Justice. The basic evil is not the administration of the law, but rather the administrative structure frozen into law.

Reform Number One—Consolidation of Conflicting and Overlapping Responsibilities

A. Present Situation

1. Since 1917, there has been a complete dichotomy between the issuance of visas to aliens (a function within the Department of State[6]), and the admission of visaed aliens to the United States (a function performed now by the Attorney General[7] and prior to June 1940, by the Secretary of Labor[8]).

2. A visa issued by an American consul is no assurance that the alien to whom it was issued will be admitted into the United States by the Attorney General,[9] acting through the Immigration and Naturalization Service.

3. The consul and the immigration officer apply the same law to the same individual.[10] Thus, the result of the present situation is that even where a single issue of law or fact is involved:

(a) a consul is free to ignore a legal ruling or precedent established by the Immigration Service or the Board of Immigration Appeals (although it acts for the Attorney General of the United States[11]), notwithstanding the case in question is on all fours with the instant one. If a consul denies a visa to an alien, even where such action flies in the face of a contrary ruling by the other departmental authorities or even by the courts, such alien and his American sponsor are without any right of appeal to anyone;[12]

(b) immigration authorities within the Department of Justice, either in original jurisdiction or on appeal to a specal inquiry officer or to the

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[6] See Act of 1952 §§ 221-24.

[7] Id. §§ 231-40. The Attorney General has delegated this power to the Commiss of Immigration and Naturalization. 8 C.F.R. § 9.1 (1958).

[8] Reorg. Pl. No. V of 1940, 54 Stat. 1238 (1940). See 5 U.S.C. § 133t (1952). earlier history of Immigration & Naturalization Service, see Gordon, Judicial Revie Exclusion & Deportation, 31 Interpreter Releases 74, 75 (Mar. 1, 1954); The Immigra and Naturalization Systems of the United States, S. Rep. No. 1515, 81st Cong., 2d S 290-91 (1950) (hereinafter cited as Sen. Jud. Rep.).

[9] Act of 1952 § 221(h).

[10] Pres. Com. Rep. at 127. See Besterman, Commentary on the Immigration Nationality Act ("the long established principle of double check"). Cf. Act of 1952 § 221

[11] 8 C.F.R. Pt. 6 (1958). See Part II A(2) infra. Query, effect of Act of 1952 § ("determination and ruling by the Attorney General with respect to all questions of shall be controlling.")?

[12] See Part II A(1) infra.

Board of Immigration Appeals may completely ignore, or reject, the findings of fact or legal rulings of a consul even when such ruling is bolstered by an Advisory Opinion from the Visa Office of the Department of State.

B. Recommendations of Presidential or Congressional Commissions

Three Presidential or Congressional Commissions have found this duplication in statutory structure and allocation of governmental functions to be undesirable, and have recommended a consolidation in a single government agency of all authority to issue visas to aliens overseas and to inspect them for admission at ports of entry in the United States.

1. The First Hoover Commission

The Commission on Organization of the Executive Branch of the Government, established by act of Congress, concluded in its 1949 report that this dual control of immigration was unwise, and recommended that the functions of the Visa Division of the Department of State be transferred to the Department of Justice.

The first Hoover Commission made two pertinent recommendations:

> 1. The State Department as a general rule should not be given responsibility for the operation of specific programs whether overseas or at home.
>
> 2. [T]he functions of visa control . . . should be transferred from the State Department to the Justice Department.[13]

The Hoover Commission's Task Force on Foreign Affairs, whose recommendation was subsequently adopted by the Commission, made this analysis of the situation:

> Thus, the situation in connection with the issuance of visas is confusing because of the division of authority between the Departments of State and Justice. Specifically, both have joint policy, regulatory and procedural responsibilities in the issue of visas, and whereas the State Department grants the initial visa to an alien the Justice Department has the final authority to approve or disapprove the visa on the basis of its independent judgment.[14]

The Task Force submitted the following recommendations:

> 1. All visa responsibility, therefore, except with respect to diplomatic visas should be placed in the Justice Department. Visa work presently performed by the Foreign Service abroad should be continued but in accordance with policies established by the Justice Department in consultation with the State Department.
>
> 2. The logical solution to the visa problem lies in the transfer of the Visa Division functions to the Department of Justice. Diplomatic visas, however, should remain under the jurisdiction of the Secretary of State.[15]

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[13] Commission on Organization of the Executive Branch of Government, Report on Foreign Affairs, H.R. Doc. No. 79, 81st Cong., 1st Sess. 32, 34 (1949).

[14] Task Force Report on Foreign Affairs, 104 (App. H 1949).

[15] Id. at 18.

2. The Perlman Commission

The President's Commission on Immigration and Naturalization, which was established by Executive Order, recommended in its 1953 report that there be a consolidation of all immigration and naturalization functions into a single agency, and proposed the creation of a new commission for such purpose. Its report said:

> The Commission agrees with the Hoover Commission that a large program of such an administrative operation as the immigration law has no place in the Department of State. . . . The Commission recommends that the primary determination overseas of an alien's application for a visa to the United States should be made by officials of the same agency which determines admissibility at the ports of entry. Presentation of such visa at a port of entry in the United States should entitle an alien to be admitted without further inquiry except as to (1) identity, (2) any medical condition developed since the visa was issued, and (3) any evidence relating to subversive activities not previously considered.[16]

The Commission concluded:

> There is no reason why there should be two independent determinations of the same issue, except upon the basis of mistrust and fear. Every national purpose would be fully served by one thorough and trustworthy determination.
>
> The best available information indicates that this costly, unwieldy, and unbusinesslike duplication serves no reasonable purpose. It is hardly more than historical accident which has become, to some, a principle. . . .
>
> . . . The time has come to terminate the unnecessary and costly obstructions established by the duplication of visa and immigration examination. This could be accomplished by eliminating overlapping and duplication through unifying these functions in a single process. The result will be a more effective administration of the law, a saving of Government expenditures, and a better location of administrative responsibility.[17]

3. The Wright Commission

The Commission on Government Security was established by act of Congress and included, among its members, Mr. Loyd Wright, former president of the American Bar Association, Congressman Francis E. Walter, co-author of the 1952 act, one other member of the House of Representatives, and two United States Senators. In its 1957 report, this Commission recommended that:

> The Immigration and Nationality Act of 1952 should be amended to (1) transfer the functions of visa control, except for diplomatic and official visas, from the Department of State to the Department of Justice and (2) authorize the Attorney General to maintain offices and personnel abroad to carry out the visa functions without the concurrence of the Secretary of State being a requisite for such action.[18]

The Wright Commission, after consideration of the various points of view, concluded:

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[16] Pres. Com. Rep. at 135.

[17] Id. at 134-35.

[18] Report of the Commission on Government Security 572 (July 1957) (hereinafter cited as Wright Report).

> The Commission on Government Security has deliberated at length over the implications of the Hoover Commission recommendation. On the basis of our own analysis of all facets of this complex question, we arrive at the same conclusion.
>
> To insure maximum security in this area, responsibility properly must be concentrated in the agency the Congress has always intended shall make final determination of admissibility or inadmissibility. To achieve that goal, there must be a realignment to insure complete control by the Immigration Service from the time the alien first makes application for a visa right down to the moment he first sets foot on the American shoreline.[19]

C. *Views Supporting Status Quo*

The *status quo* of dual administration has been supported by the Senate Judiciary Committee[20] and the Department of State.[21] But what was once a solid phalanx of support for the *status quo* has been split in two. The McCarran-Walter Act's acceptance of dual administration seems to have been abandoned by its co-author Walter who signed the Wright Commission's report condemning this organizational pattern. And the Commissioner of Immigration now favors consolidation of these functions.[22]

D. *Previous Administrative Efforts*

The proposals for consolidation have been made in the historical context of continuous administrative efforts to cope with the unsatisfactory situation growing out of over-lapping responsibilities and conflicting decisions. Even before the Immigration Act of 1924, Immigration Service officers were assigned as attachés to consulates overseas.[23] Up to World War II, these immigration officers acted only as technical advisers to the consuls.[24] But since 1948, under the displaced persons[25] and refugee relief[26] programs, immigration officers stationed overseas have determined admissibility of aliens, after documentation with a visa, before their embarkation, just as if the inspections were being conducted at ports of entry into the United States. However, this practice was known to each of the Presidential or Congressional Commissions and apparently persuaded none of them as being suitable or able to achieve any effective solution to the problems arising from dual responsibilities and administration under the immigration and nationality laws.

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[19] Id. at 577-78. The Commission's proposals are incorporated in S. 2416, 85th Cong., 1st Sess. (1957).

[20] Cf. Sen. Jud. Rep. at 331, 333.

[21] The views of the State Department are outlined in the Wright Report, supra note 18, at 574-77; and, in a special report to the Perlman Commission, Hearings before the President's Commission on Immigration & Naturalization, House Committee on the Judiciary, 82d Cong., 2d Sess. 1881 (1952) (hereinafter cited as Pres. Com. Hearings). See also Pres. Com. Rep. at 133.

[22] Wright Report, supra note 18, at 574.

[23] See Peters, U.S. Immigration Experts As Consular Officers, III Foreign Born 78 (1922).

[24] Pres. Com. Rep. at 132.

[25] Displaced Persons Commission, The DP Story 313 (1952).

[26] Administrator of the Refugee Relief Act of 1953, First Semiannual Report, House Judiciary Committee Print, 83d Cong., 2d Sess. 7 (1954); Hearings before Subcommittee of the Senate Committee on the Judiciary, Investigation on Administration of Refugee Relief Act, 84th Cong., 1st Sess. 290 (1955).

E. The American Bar Association

The American Bar Association has also proposed abolition of the present system of dual and over-lapping administration of our immigration laws. The Board of Governors adopted the following resolution:

> RESOLVED, that it is the opinion of the American Bar Association that the immigration and nationality laws of the United States should be amended to consolidate into the Department of Justice or an independent agency of government the immigration and national responsibilities now vested by law in the Department of State and the Attorney General, and
>
> That the Section of Administrative Law be authorized and directed to advance appropriate legislation.[27]

The Committee on Immigration and Nationality of the American Bar Association, Section of Administrative Law, proposed the above resolution after reaching the following conclusions:

> A study of the present dual administration of our law has led the American Bar Association to the following conclusions:
>
> 1. that no sound reason exists for such duplication of responsibility by two independent agencies of government;
> 2. that such duplication is wasteful, unnecessary and unjustifiable, and
> 3. that it is in our national interest to consolidate into a single government agency the immigration and naturalization responsibilities vested in the Department of State and in the Attorney General.[28]

What agency should administer these consolidated functions? The Hoover and Wright Commissions proposed that it be the Department of Justice; the Perlman Commission, an independent commission, and the American Bar Association eschewed any formal choice. Although the logic of the proposal for an independent commission appears to be superior, the particular agency is not as important as the consolidation itself. The merger of responsibilities now split between two government agencies in the field of immigration and nationality should not be blocked by quarrel over the identity of the new repository of responsibility and authority.

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[27] The above resolution was adopted by the Board of Governors in May 1958.

[28] Resolution and Report, approved by Committee on Immigration and Nationality on December 13, 1957, in a form slightly different from that adopted by the Board. Consolidation in the Department of Justice is proposed by 5 pending bills: H.R. 3364, 85th Cong., 1st Sess. §§ 103, 105(b)(3), 113, 506(b) (1957); H.R. 8339, 85th Cong., 1st Sess. § 2 (1957); H.R. 9352, 85th Cong., 1st Sess. § 402 (1957); H.R. 9937, 85th Cong., 2d Sess. § 402 (1958); S. 2416, 85th Cong., 2d Sess. § 2 (1958).

II. ADMINISTRATIVE HEARINGS

A. Right to a Hearing

"The right to be heard," wrote Justice Frankfurter, "is a principle basic to our society."[29] It is at the very heart of the administrative process. "The core of our constitutional system," said Chief Justice Warren, "is that individual liberty must never be taken away by shortcuts, that fair trials in independent courts must never be dispensed with."[30] Administrative agencies, said Chief Justice Hughes, "must accredit themselves by acting in accordance with the cherished judicial tradition embodying the basic concepts of fair play."[31]

Reform Number Two—Right of Appeal From a Denial of a Visa

Only a consul may issue a visa to an alien for admission into the United States.[32] If he issues the visa, there is an automatic and mandatory review in each instance. This review of consular grants of visas, by the Attorney General through the Immigration Service,[33] is completely de novo[34] and may entail a complete re-evaluation of the evidence presented to the consul even where that evidence tended to support his action and where there was no fraud or misrepresentation and where the issue is merely a matter of difference of judgment.[35]

However, where the consul denies, or refuses to issue, a visa, he is a law unto himself, and his action is final and cannot be reviewed by any other administrative authority.[36] It is current legal doctrine that this administrative absolutism prevails even where the consul has acted unreasonably[37] or has committed palpable error.[38]

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[29] Joint Anti-Fascist Refugee Comm. v. McGrath, 341 U.S. 123, 164 (1951) (concurring opinion).

[30] Jay v. Boyd, 351 U.S. 345, 370-71 (1956) (dissenting opinion).

[31] Morgan v. United States, 304 U.S. 1, 22 (1938).

[32] Act of 1952 § 104(a).

[33] Id. §§ 221-40.

[34] Id. § 221(h); see Developments in the Law-Immigration and Nationality, 66 Harv. L. Rev. 643, 661-62 (1953).

[35] In the Matter of M—, 4 I. & N. Dec. 532 (1952) (decision by the Attorney General of the United States).

[36] For a discussion of this general subject, see Rosenfield, Consular Non-Reviewability: A Case Study in Administrative Absolutism, 41 A.B.A.J. 1109 (1955).

[37] United States ex rel. London v. Phelps, 22 F.2d 288 (2d Cir. 1927), cert. denied, 276 U.S. 630 (1928). See also United States ex rel. Gruber v. Karnuth, 29 F.2d 314 (D.C.N.Y. 1928), aff'd, 30 F.2d 242 (2d Cir.), cert. denied, 279 U.S. 850 (1929).

[38] See United States ex rel. Dalloo v. Corsi, 55 F.2d 941 (D.C.N.Y. 1932) (mistake of law in State Department's instructions to consul); United States ex rel. Swystun v.

Whom We Shall Welcome

REPORT OF THE
PRESIDENT'S COMMISSION
ON IMMIGRATION AND
NATURALIZATION

Chapter 10

The Administrative Agency

The Commission recommends:

1. That a Commission on Immigration and Naturalization be created, to be appointed by the President subject to Senate confirmation, responsible for the administration of all immigration and naturalization laws.

2. That present duplication of functions between the consular officers in the Foreign Service of the Department of State and the immigrant inspectors in the Immigration and Naturalization Service of the Department of Justice be eliminated, and that a consolidated service under an Administrator of Immigration and Naturalization responsible to the proposed Commission be substituted.

3. That a Board of Immigration and Visa Appeals be created under the proposed Commission, with final administrative appellate authority (except in cases involving the exercise of discretion) in all cases of visa denials, exclusions, deportations, and other related matters.

PRESENT ADMINISTRATION OF IMMIGRATION ACTIVITIES

Under present law, the various functions relating to immigration and naturalization are committed to two separate departments of government, both administering and interpreting parts of the same law and applying them to the same persons.

The Immigration and Naturalization Service, Department of Justice

The Immigration and Naturalization Service exercises its functions in connection with the law principally within the United States, in the admission or exclusion of immigrants seeking to enter this country, the apprehension and removal of deportable aliens, the conduct of naturalization proceedings, and the preparation of denaturalization cases.

Federal administration in the field of immigration began with the act of 1864, which established a Commissioner of Immigration whose function was to encourage immigration. This law was passed in a period of manpower shortage during the Civil War, and it was repealed in 1868. Thereafter there was no Federal agency charged with the supervision of immigration until the first general immigration law of 1882 was enacted. The 1882 act vested responsibility for its administration in the Secretary of the Treasury, but actual enforcement was entrusted to State boards or officers designated by him.

Federal administrative enforcement began with the passage of the act of 1891 when Congress provided that there should be in the Treasury Department a Superintendent of Immigration, whose title was later changed to that of Commissioner General of Immigration.

The Bureau of Immigration was transferred from the Treasury Department to the Department of Commerce and Labor upon its establishment in February 1903. The Naturalization Act of 1906 inaugurated Federal supervision of naturalization and established a consolidated agency known as the Bureau of Immigration and Naturalization. In 1913, the consolidated bureau was moved to the new Department of Labor and was divided into the Bureau of Immigration and the Bureau of Naturalization. At the head of the Bureau of Immigration was a Commissioner General of Immigration, while at the head of the Bureau of Naturalization was a Commissioner of Naturalization. Both bureaus were placed under the immediate direction of the Secretary of Labor.

The two bureaus continued to function separately until 1933, when the President, acting pursuant to Congressional authority, directed by Executive Order that they be merged as the Immigration and Naturalization Service, headed by the Commissioner of Immigration and Naturalization. From 1933 until 1940, the Service functioned under the direction of the Secretary of Labor.

In 1940, the President submitted to Congress a reorganization plan which proposed to transfer the Immigration and Naturalization Service from the Department of Labor to the Department of Justice. The plan was approved and the transfer became effective June 14, 1940. Since then, the Immigration and Naturalization Service has functioned as part of the Department of Justice under the direction of the Attorney General of the United States.

Foreign Service, Department of State

The Immigration Act of 1924 vests the performance of the visa function, which consists of the granting or denial of visas in consular officers of the American Foreign Service abroad, which operates under the control and direction of the Department of State. Under the act of 1952, the authority to issue or deny visas is clearly and exclusively vested in the consular officers, and the statute directs that they shall not be subject to the supervision of the Secretary of State in this regard.

The requirement of a visa to enter this country is relatively new, and dates only from World War I when it was established essentially as a war-time security device. This requirement to obtain visas from American consular officers abroad was given statutory recognition in the act of 1918. Under the Immigration Act of 1924, however, immigrant aliens seeking to come to the United States were required to establish in advance their eligibility under all the immigration laws and to obtain a visa from an American consul stationed abroad before embarkation. An immigrant was prohibited from entering the United States unless he was in possession of an unexpired immigration visa. However, the issuance of such a visa by an American consular officer does not guarantee his admission to the United States.

Other statutes have given additional responsibility under the immigration laws to the Secretary of State. Thus, under the Passport Act of 1918 as amended, the Secretary of State with the concurrence of the Attorney General, is authorized during the time of war or emergency to describe classes of aliens whose entry would be prejudicial to the United States. The Alien Registration Act of 1940 empowers the Secretary of State in emergency cases to waive documentary requirements for aliens seeking to enter this country.

To aid in the performance of the visa functions abroad under the immigration laws, a Visa Division was created in the Department of State. The Visa Division provides technical guidance and assistance to consular officers who themselves must determine initially the alien's admissibility to the United States.

In the final report of the Senate Judiciary Committee, following its recent study of the immigration system of the United States, the following recommendation was made:

> Because of the close relationship of the Visa and Passport Divisions of the Department of State and their importance in the control of immigration problems, the subcommittee recommends the establishment of a Bureau of Passports and Visas as an independent unit of the Department of State, headed by a Director with the rank of Assistant Secretary of State and subject to general supervision by the Secretary.

To meet objections of the Department of State the bill was revised to establish a Bureau of Security and Consular Affairs responsible to the Secretary of State, and closely integrated within the Department's framework. It was enacted in this form in the Immigration and Nationality Act of 1952.

Board of Immigration Appeals, Department of Justice

A third agency which functions in the immigration process is the Board of Immigration Appeals. During virtually all of the period when the Immigration and Naturalization Service was in the Department of Labor, there was no independent Board of Appeals. Originally, the Secretary of Labor was aided by an advisory committee in making his determinations under the immigration and naturalization laws. In 1922 a five-man Board of Review was established in order to review all immigration cases and to make recommendations to the Secretary of Labor. The Board of Review had no power to make decisions, and was responsible to the Secretary of Labor, whom it advised. The Board of Review offered an opportunity for oral argument, submission of briefs, and more careful consideration. Also, it relieved the Secretary of Labor of the burden of considering a large volume of appeals. When the Immigration and Naturalization Service was established as a consolidated agency in 1933, the Board of Review became responsible to the Commissioner, and its recommendations were reviewed by him before being transmitted to the Secretary of Labor.

With the passage of time the procedures and the anomalous position of the Board of Review were subjected to increasing criticism. In 1931, the Wickersham Commission, studying the enforcement of Federal laws, advocated the creation of an independent tribunal so that the prosecuting and administrative functions in immigration matters would be completely separated from judicial duties. The latter duties would be vested in an independent tribunal, "composed of men of judicial caliber, to be appointed by the President." The Commission stated:

> The creation of such an independent tribunal for the determination of deportation cases seems to be the logical development of the present system itself. The Department of Labor has found it advisable to create a Board of Review within its own organization. As has been shown, this board has developed certain embryonic judicial tendencies, although the growth of these tendencies has been hampered by the subordinate position in the department which the board occupies. The next step in development seems clear—the dichotomy should be made complete. The Board of Review should be lifted out of its place in the Department of Labor and should be made an independent tribunal.
>
> Perhaps the closest analogy in structure to such a proposed tribunal is the Board of Tax Appeals, an independent governmental agency created by Congress in 1924. The Board neither initiates nor prosecutes the cases which are brought before it but in effect sits as a court. Its hearings are public and its decisions are reported. It has some power of appointment and is working out an elastic organization. Appeals are allowed in the respective circuits. The independence of this Board and the satisfactory nature of its decisions are generally conceded.
>
> There seems to be no good reason why we should not proceed at least as far in the establishment of a satisfactory system with respect to the important personal rights involved in deportation as we have with respect to the property rights involved in taxation.

From 1938 to 1940 the Secretary of Labor's Committee on Administrative Procedure made an exhaustive study of the Immigration and Naturalization Service. Its report stressed the necessity of freeing the Board of Review from other than quasi-judicial duties, stating that the agglomeration of duties placed on the members of the Board was indefensible, and that

> It is folly even to talk of fair hearing by individuals who are struggling under such a load . . . The several thousand of admissions and deportation cases which would be referred to the Board under the arrangements we are suggesting are as much as its members can possibly consider with any semblance of fairness.

These recommendations were accepted and put into effect. In 1939 the Board of Review was removed from the control of the Commissioner and was made responsible only to the Secretary of Labor. When the Immigration and Naturalization Service was transferred to the Department of Justice in 1940, the Board of Review became the Board of Immigration Appeals and was placed under the immediate direction of the Attorney General. Unlike the Board of Review, which could make only recommendations, the Board of Immigration Appeals was empowered to make final decisions, subject to possible review by the Attorney General. Since 1940 it has continued to function as an arm of the Attorney General, independently of the Immigration and Naturalization Service whose decisions it reviews.

The Board of Immigration Appeals, composed now of a chairman and four associate members, never has been recognized by statute. It continues to function at the pleasure of the Attorney General and for his convenience. Its jurisdiction is defined in regulations which have been changed on a number of occasions during recent years. Its primary function is to hear and decide appeals in exclusion and deportation cases. However, since there is no statutory restraint the Attorney General could at any time abolish the Board of Immigration Appeals or modify its jurisdiction in any regard he deems appropriate.

UNNECESSARY DUPLICATION OF FUNCTIONS

The requirements of the Immigration Act of 1924 that approval must be obtained overseas before the alien could embark for the United States was an important improvement over earlier procedures. It enabled the alien to obtain an advance, but not final, determination of his eligibility before he pulled up his roots and undertook the long and expensive trip to the United States.

While acknowledging the distinct advances in administration made possible by this improved procedure, many have pointed out the resultant disadvantages. There is an obvious duplication in functions between the consular officer overseas and the immigration officer at the port of entry. The consul must determine the alien's admissibility to the United States before he can issue a visa. The immigration officer likewise must determine the alien's admissibility before he can permit him to enter the United States. Both interpret and apply the same law.

An additional consideration concerns the qualifications of consuls to make such determinations. The consular function is an old and important one in international relations. The consul's traditional duties have related primarily to protecting the property and personal interests of American citizens in foreign countries and to the promotion of trade and commerce. The function added after World War I, of passing upon an alien's admissibility to the United States under the immigration laws has been regarded by some as a secondary one. The personnel to whom this function was assigned generally were insufficiently equipped at first by training and experience. Thus, the Department of State has reported to the Commission that only 3 percent of visa officers have had legal training despite the fact that the visa issuing officer is required to deal with "a great body of complex laws and regulations." It is important to note that the consul's negative decision on a visa application is final and unreviewable.

Soon after operations commenced under the Immigration Act of 1924 it became apparent that consular officers often lacked adequate training and background to discharge their new responsibilities under the immigration laws. These deficiencies resulted in a considerable volume of rejections at ports of arrival in the United States of aliens who had been granted visas. In order to aid the consuls immigrant inspectors were sent abroad in 1925 under an agreement with the Department of State and were attached as technical advisers to the consulates at London, Southampton, Liverpool, Glasgow, Belfast, Dublin, and Queenstown. Although the consular officer had final authority in determining whether a visa was to be issued, he usually was guided by the advice of the immigrant inspector.

This system was successful in operation and was extended to the Scandinavian countries, Poland, Czechoslovakia, the Netherlands, Belgium, Italy, Germany, and Austria. The reduced immigration during the depression of the 1930's resulted in a decrease in the number of technical advisers. In 1934, for example, there were nine immigration technical advisers stationed in Europe, each of whom was assigned to areas in Europe and traveled on circuit between the different consulates in that area. The technical-adviser system was terminated at the outbreak of World War II in Europe and has not since been reinstated.

During the displaced persons program, immigration inspectors were stationed overseas, and in effect passed upon the immigrants' admissibility after documentation with a visa, just as is ordinarily done at American ports of entry.

In 1949, the Hoover Commission on Organization of the Executive Branch of the Government recognized the deficiencies of the present system under which there is a dual control of immigration and recommended that the Visa Division of the Department of State be transferred to the Department of Justice. The Hoover Commission made two pertinent recommendations:

> 1. The State Department as a general rule should not be given responsibility for the operation of specific programs whether overseas or at home.
>
> 2. * * * the functions of visa control * * * should be transferred from the State Department to the Justice Department.*

The Hoover Commission Task Force Report on Foreign Affairs elaborated in two statements:

> 1. All visa responsibility, therefore, except with respect to diplomatic visas, should be placed in the Justice Department. Visa work presently performed by the Foreign Service abroad should be continued but in accordance with policies established by the Justice Department in consultation with the State Department.
>
> 2. The logical solution to the visa problem lies in the transfer of the Visa Division functions to the Department of Justice. Diplomatic visas, however, should remain under the jurisdiction of the Secretary of State.

Following publication of the Hoover report, the Department of State organized several committees to study the various recommendations. One of these committees was the Visa Task Force which presented its findings in a report (March 31, 1949) in answer to the Hoover Commission recommendations on location of the visa functions. This State Department report counseled against acceptance of the Hoover Commission's recommendation to consolidate immigration functions.

The study of the Senate Judiciary Committee which preceded the introduction and enactment of the act of 1952 likewise took cognizance of this duplication. However, the committee declined to recommend any substantial changes and stated:

> Among the principal points of criticism aimed at the present immigration structure has been the contention that the multiplicity of control by several agencies of various immigration activities should be eliminated. In general, the subcommittee has come to the conclusion that, although there are some points in the mechanism where coordinated action is necessary and duplication must be eliminated, the over-all structural pattern ought to be maintained. The subcommittee is persuaded to the position on the grounds that (1) the distribution of responsibility places additional barriers in the way of undesirable aliens, additional fences of protection which the alien must surmount, and (2) the present system operates satisfactorily and the suggested modifications will eliminate most of the existing difficulties.

The Senate Judiciary Committee likewise addressed itself specifically to the recommendations of the Hoover Commission, and stated:

> The subcommittee has given serious consideration to the proposal advanced by the Hoover Commission for a transfer of the Visa Division to the Department of Justice and its merger with the Immigration and Naturalization Service. As already pointed out, the subcommittee is persuaded to continue the visa process separate from the immigration procedure as an additional barrier to the entry of inadmissible aliens.

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*Report of Hoover Commission, on Foreign Affairs, House Doc. 79, 81st Cong., 1st Sess., pp. 83, 84.

The act of 1952 made no appreciable change in the organizational set-up except to establish in the Department of State a Bureau of Security and Consular Affairs. Provision was made within that Bureau for a general counsel of the Visa Office authorized "to maintain liaison with the appropriate officers of the [Immigration and Naturalization] Service with a view to securing uniform interpretations of the provisions of this act."

Feasibility of Consolidating Functions

All witnesses who addressed themselves to this problem in the Commission's public hearings urged that the functions of consular and immigration officers should be consolidated. The Commission agrees that this is a desirable goal. There is no reason why there should be two independent determinations of the same issue, except upon the basis of mistrust and fear. Every national purpose would be fully served by one thorough and trustworthy examination and determination.

The best available information indicates that this costly, unwieldy, and unbusiness-like duplication serves no reasonable purpose. It is hardly more than historical accident which has become, to some, a principle. An informal study in the Department of State a few years ago disclosed that in less than one-half of 1 percent of all cases where visas were issued by consular officers were the applicants rejected at ports of entry in the United States. The 1951 annual report of the Immigration and Naturalization Service supplied the following information concerning the number of aliens excluded at the border:

Table 13.—*Aliens Excluded From the United States, by Cause, Year Ended June 30, 1951*

Cause	Number excluded		
	Total	Border crossers[1]	Other aliens
All causes	5, 647	1, 863	3, 784
Without proper documents	3, 963	1, 180	2, 783
Criminals	610	273	337
Mental or physical defectives	434	97	337
Subversive or anarchistic	165	136	29
Stowaways	121	----------	121
Had been previously excluded or deported	119	72	47
Likely to become public charges	116	38	78
Immoral classes	38	23	15
Previously departed to avoid military service	14	10	4
Unable to read (over 16 years of age)	3	----------	3
Contract laborers	1	----------	1
Other classes	63	34	29

[1] Aliens seeking admission at land borders for less than 30 days.

Excluding from consideration border crossers and aliens without proper documents, this table reveals that during 1951 approximately 1,000 aliens in possession of visas were excluded by immigration officers at the ports of arrival in the United States. The extent of unnecessary duplication is revealed when this is compared with some 206,000 immigrants admitted during that same period, in addition to visitors.

In the Commission's opinion, the duplication in visa issuance and immigration examinations is wasteful and unjustifiable. The Commission cannot subscribe to the sentiment that this obstructive process is required "as an additional barrier to the entry of inadmissible aliens." By the same token such additional barriers can operate also to shut out desirable aliens; the relatively few inadmissible aliens it stops could be dealt with by a unified and more effective administration.

Similarly, the Commission is not impressed with the State Department's suggestion that the conduct of foreign relations requires the issuance of nondiplomatic visas by consular officers. The consular function did not until 1924 include the issuance of immigration visas. Nor is the State Department suggesting that foreign policy requires the determination of admissibility by consular officers at the port of entry in the United States.

The time has come to terminate the unnecessary and costly obstructions established by the duplication of visa and immigration examinations. This could be accomplished by eliminating overlapping and duplication through unifying these functions in a single process. The result will be a more effective administration of the law, a saving of Government expenditures, and a better location of administrative responsibility.

Operation of Proposed System

The Commission agrees with the Hoover Commission that a large program of such an administrative operation as the immigration law has no place in the Department of State, whose primary responsibility is the conduct of foreign relations. **The Commission recommends that the primary determination overseas of an alien's application for a visa to the United States should be made by officials of the same agency which determines admissibility at the ports of entry. Presentation of such visa at a port of entry in the United States should entitle an alien to be admitted without further inquiry except as to (1) identity, (2) any medical condition developed since the visa was issued, and (3) any evidence relating to subversive activities not previously considered.**

The Commission believes that there should be no substantial difficulty in establishing such a system of unified determinations in the foreign areas where there are large volumes of applications for visas. In such places visa issuance is a full-time job for visa officers. There may be some rearrangement necessary for operation in isolated areas from which few applications for visas originate and where, therefore, full-time visa officers are not stationed. This is a problem of administrative management, susceptible of a variety of solutions. The Commission believes that in such areas the agency responsible for the consolidated functions could follow the normal procedure used by many Government agencies in connection with overseas activities. The consular officer could be designated as an agent of the immigration authorities to receive the application, which then could be forwarded, with the requisite documents and evidence, to the nearest overseas regional office of the consolidated agency. The determination would be made by an officer stationed in such a regional office. If the evidence is incomplete, he could request the consul to conduct any additional interrogation or investigation deemed necessary. Or, if advisable, the consular officer could in these few cases be authorized to act on behalf of the consolidated agency.

It has been suggested that there may be difficulty in stationing officers of the consolidated agency in some foreign countries. Immigration officers have already performed duties under our immigration laws in Germany, Great Britain, Canada, Italy, and in other countries. To satisfy any requirements of protocol such officers could be attached for technical purposes to our Embassies or other accredited offices with conventional titles.

The differences between present procedures and the consolidated procedure the Commission has recommended, including suggested appellate procedures, are illustrated in Chart I.

The consolidation of all immigration functions in one responsible agency is an essential aspect both of the new approach to immigration which the Commission believes to be long overdue, and of the efficiency in Government which it was the purpose of the Hoover Commission to reach. Whatever mechanical difficulties may arise from such a consolidation could, with proper spirit and good will, be overcome completely and promptly.

PROPOSED ADMINISTRATION OF IMMIGRATION AND NATURALIZATION

Nature of Functions

As conceived by the Commission, there are three major functions to be performed by administrative officials of the Government in the field of immigration and naturalization:

(1) Enforcement—this includes visa issuance, inspection and exclusion at ports of entry, policing, investigation, deportation, admin-

Chart I.—*Comparison of Present and Proposed Procedures*

Type of action	Present program	Proposed plan
Overseas:		
Action on visa	By American consular officer.	By officer of proposed commission.
Appeal	No regular appeal provided.	Appeal to statutory Board of Immigration and Visa Appeals.
Port of entry:		
Action on admission	By immigration inspector, with complete authority to review consular action.	By inspector but limited to (1) identity, (2) health, (3) security.
Determination on questionable cases.	To Board of Special Inquiry. After Dec. 24, 1952 to (single) special inquiry officer.	To hearing officer under Board of Immigration and Visa Appeals.
Appeal:		
Initial	To nonstatutory Board of Immigration Appeals.	To statutory Board of Immigration and Visa Appeals.
Final	No further appeal, but Board of Appeals may certify immigration cases to Attorney General and Attorney General may review on own motion.	Review by proposed commission in selected cases involving discretionary relief.

istrative prosecution, and the administration of the naturalization laws.

(2) Adjudication—this includes the determination of cases and of their appeals within the administrative process.

(3) Policy determination—this includes over-all policy formulation; the issuance of regulations for allocation of visas, within the statutory ceiling, subject to change by the President and disapproval by the Congress; and making reports and recommendations to the President and the Congress.

Another aspect of this problem relates more to attitude than to specific functions. The Commission is impressed by the suggestions it received that the administration of immigration laws should be such as to develop and maintain an atmosphere and spirit of friendship for immigrants. Whatever the cause, and often it is beyond the control of the administrative officials, the fact seems to be that the administrative procedures are unsatisfactory, and are productive of unnecessary and wasteful delays and embarrassments at home and abroad. This factor is an important consideration in the development of any administrative structure in the field of immigration and naturalization.

Location of Functions

Throughout the course of Federal immigration administration there has been no certainty as to the proper place of immigration functions. Originally, immigration enforcement was assigned to the Treasury Department. In 1903 it was transferred to the Department of Commerce and Labor. It moved to the Department of Labor in 1913, and in 1940 it was shifted to the Department of Justice. Through the years immigration and naturalization functions have been handled either by two bureaus or by a single bureau. The review process was nonexistent, then advisory, later part of the Immigration and Naturalization Service, and finally directly under the head of the Department.

Additional proposals to shift immigration and naturalization functions from the Department of Justice to another agency have been made from time to time. During the Commission's hearings there was a diversity of sentiment on this subject. Some proposed that the Immigration and Naturalization Service be returned to the Department of Labor. Others suggested that a new agency be created. Still others urged that matter be let alone.

The Commission's recommendations introduce a new function not now vested in either of the two departments. This new element, the allocation of visas, requires reconsideration of the entire matter since it is no longer a question of old functions remaining in Justice or State Department, but rather where new and consolidated immigration functions are to be placed. **The Commission has already expressed agreement with the Hoover Commission that it is inappropriate to put these functions in the Department of State.** In its recommendation that they be assigned to the Department of Justice, the Hoover Commission naturally did not consider the proposed new functions of visa allocation.

It may be argued that these combined functions should be vested in the Department of Justice because the immigration law involves responsibilities related to the national security and that these logically fit into the Justice Department's sphere of activity. The Commission believes, however, that the arguments to the contrary are more persuasive. Presumably, the primary security tie to the Department of Justice would be the necessity of close relationship with the Federal Bureau of Investigation. Actual practice, however, does not justify such an argument. The Immigration and Naturalization Service conducts its security functions through its own investigative unit which is completely separate from the Federal Bureau of Investigation. Its liaison with the Federal Bureau of Investigation could be just as close if the two investigative units were in different agencies. Furthermore, security functions concerning immigration were performed effectively by the Displaced Persons Commission, and were closely related to the Federal Bureau of Investigation, the Central Intelligence Agency, and the Immigration and Naturalization Service, although the Displaced Persons Commission was an independent agency.

The Department of Justice is primarily a litigating and prosecuting agency. It includes the Federal Bureau of Investigation and the administration of Federal prisons, but these are natural arms of its prosecuting functions. There seems to be no good reason why the Department of Justice should be concerned with such matters as the allocation of visas to such preferential groups as may be authorized by Congress; with the issuance of visas to individual applicants abroad, and the subsequent operations at the ports of entry; or with citizenship education. None of these matters has any real relationship to the normal operations of the Department of Justice. The added responsibilities proposed by the Commission remove it further from such relationships.

On the other hand, there is every reason why many determinations made under immigration and naturalization laws should be removed from control by the Department of Justice. The Immigration and Naturalization Service has its own legal staff, separate from the various divisions of the Department of Justice, and conducts such matters in the same manner and to the same extent as do other departments of the Federal Government. If the existing and proposed new functions were combined in an independent agency, the Department of Justice would continue to handle at higher levels litigation originated in or with the independent agency in the same manner as is now done for other departments and agencies. There are those who believe that one of the present causes of criticism of the immigration laws stems from the fact that the administration of those laws is centered in a prosecuting and litigating agency. No sound argument has been advanced for keeping it where it is. **The new and combined functions do not properly fit in the Department of Justice.**

Nor is the Commission convinced by those who urge returning the immigration authority to the Department of Labor. This is not to say that the Department of Labor has no interest in the subject. But the major aspects of immigration and naturalization policy and administration are largely unrelated to the responsibilities of the Department of Labor. Furthermore, the immigration policy of the United States cannot be based solely upon manpower or labor considerations, although such factors are undeniably important.

Another suggestion is that immigration and naturalization functions should be located in the Federal Security Agency. That agency already plays a role in the immigration process through the medical examinations of immigrants by the Public Health Service, and because of the requirement of the act of 1952 for reports on social security information for the Immigration and Naturalization Service. It is argued that such a change would be desirable in the light of the Federal Security Agency's interest in people as such, whether aliens or natives.

The fact is, however, that the administration of the consolidated immigration and naturalization functions, coupled with the new responsibility for visa allocations, does not properly belong in any existing department or agency. It touches upon many, must work closely with some, but really has no basic connection to the primary responsibilities discharged by any of the other departments and agencies. The result is that the problems relating to immigration and naturalization do not command adequate thought and attention of the cabinet officers under whom either the Immigration and Naturalization Service or the Visa Division have been placed.

Independent Agency

This leaves only one other alternative, an independent agency. As a general proposition the Commission recognizes government administration should be organized within departments under the supervision of cabinet officers. But this administrative design gives way to the principle that in a democracy content should prevail over form. And so the Congress has established the Interstate Commerce Commission, the Federal Power Commission, and the Federal Communications Commission, among others which are not within cabinet departments. These agencies, as with the proposed consolidated immigration agency, exercise legislative, quasi judicial and administrative functions. Everyone will agree that the interests of the people are best served by that form of governmental administration which most effectively accomplishes the governmental purpose and not that which is motivated purely by administrative expediency.

The Commission believes that the major immigration functions described in this Report can be performed most effectively through an independent agency. The duties are so important, particularly in connection with the visa allocation authority, that the public interest requires a definite pin-pointing of responsibility, as well as the full-time attention which a cabinet officer cannot give.

The Commission believes that the creation by Congress of a new and independent immigration agency will assure the development of the fresh approach needed to change our immigration policy from a negative to a positive force.

The expert study, knowledge and experience required for visa allocation decisions, and for reports to the President and Congress, coupled with the other proposed new and highly important administrative and appellate duties and powers, make it advisable, if not mandatory, that such authority be exercised by an independent agency headed by a commission.

Commission on Immigration and Naturalization

The Commission recommends the establishment of a new and permanent Commission on Immigration and Naturalization to have control and supervision over the entire field of immigration and naturalization. This proposed Commission would be composed of three, five or seven members, as the Congress may determine. They should be appointed by the President, subject to Senate confirmation.

Under this proposed Commission there would be an Administrator of Immigration and Naturalization, appointed by and responsible to that Commission, and who would be charged with all phases of administration and enforcement. Completely separate from the Administrator, but also appointed by and responsible to the proposed Commission, would be a Board of Immigration and Visa Appeals. That Board would have final authority to make necessary administrative adjudications in exclusion and deportation cases, subject only to a limited appeal to the proposed Commission in cases involving the exercise of discretion, but not in questions of law or fact, whenever that Commission agrees to accept such appeals. In addition to exclusion and deportation cases, the Board would hear appeals in visa cases and would also determine whether an alien may be excluded without a hearing in security cases, in the manner described in Chapter 15.

The Commission believes that such a plan would mark an important advance from the existing scheme of organization. It would produce much more effective and coordinated administration and would assure the required high-level consideration of allocations to be made within the unified quota system. It would bring the immigration process into line with the separation of functions contemplated by the Administrative Procedure Act, generally recognized as the norm of fair administrative organization.

If this Commission's recommendation for the creation of an independent Commission on Immigration and Naturalization is adopted, provision should be made for the personnel now employed by the Immigration and Naturalization Service, and by the Visa Division, performing functions affecting immigration in Washington and in the consular offices overseas. The present employees of the Immigration and Naturalization Service should be transferred to the proposed Commission and assigned duties under the proposed Administrator of Immigration and Naturalization. Present staff of the Board of Immigration Appeals and hearing examiners of the Immigration and

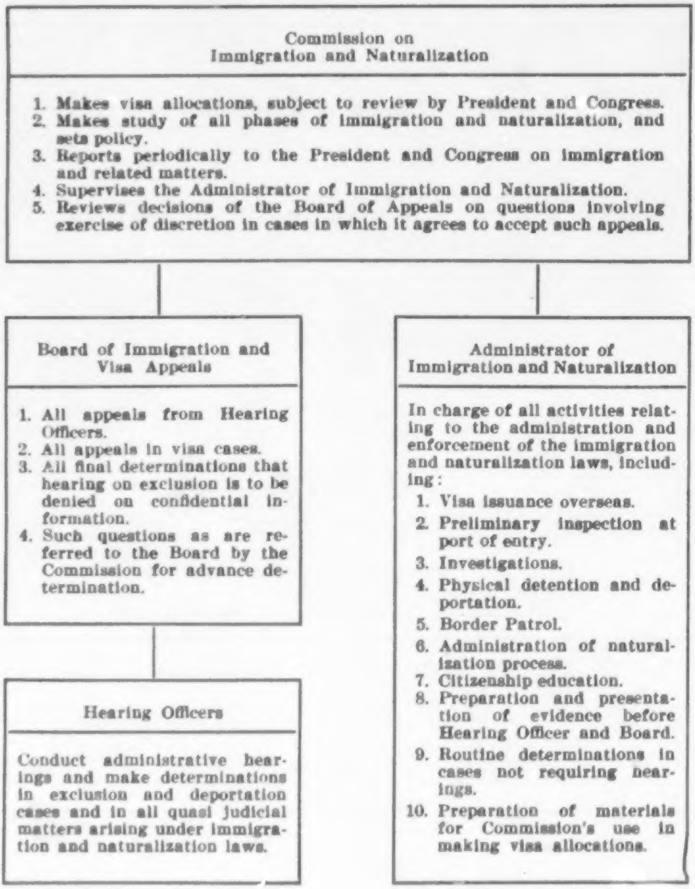
Naturalization Service should also be transferred to the new Commission and assigned to duties under the proposed Board of Immigration and Visa Appeals. The transfer of personnel working on visa matters in the Department of State and exercising the visa function abroad likewise should present no serious difficulty. It should be ascertained which employees in the Bureau of Security and Consular Affairs and which of our consular officers in foreign countries are engaged primarily in visa activities. Such employees should be transferred to the new Commission.

Moreover, any transfer of personnel from the Department of State and the Department of Justice to the new Commission should be made without prejudicing any status, rights, or privileges of such employees.

All pertinent records and files should be transferred to the proposed Commission, along with the transfer of functions and staff now vested in other agencies.

Chart II portrays the plan of organization suggested by the Commission.

Chart II—Proposed Administrative Agency



Commission on Immigration and Naturalization

1. Makes visa allocations, subject to review by President and Congress.
2. Makes study of all phases of immigration and naturalization, and sets policy.
3. Reports periodically to the President and Congress on immigration and related matters.
4. Supervises the Administrator of Immigration and Naturalization.
5. Reviews decisions of the Board of Appeals on questions involving exercise of discretion in cases in which it agrees to accept such appeals.

Board of Immigration and Visa Appeals

1. All appeals from Hearing Officers.
2. All appeals in visa cases.
3. All final determinations that hearing on exclusion is to be denied on confidential information.
4. Such questions as are referred to the Board by the Commission for advance determination.

Hearing Officers

Conduct administrative hearings and make determinations in exclusion and deportation cases and in all quasi judicial matters arising under immigration and naturalization laws.

Administrator of Immigration and Naturalization

In charge of all activities relating to the administration and enforcement of the immigration and naturalization laws, including:

1. Visa issuance overseas.
2. Preliminary inspection at port of entry.
3. Investigations.
4. Physical detention and deportation.
5. Border Patrol.
6. Administration of naturalization process.
7. Citizenship education.
8. Preparation and presentation of evidence before Hearing Officer and Board.
9. Routine determinations in cases not requiring hearings.
10. Preparation of materials for Commission's use in making visa allocations.

47.

From

88th CONGRESS
1st Session

H. R. 7700

IN THE HOUSE OF REPRESENTATIVES

July 23, 1963

Mr. Celler introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To amend the Immigration and Nationality Act, and for other purposes.

Sec. 16. (a) There is hereby established the Immigration Board (hereafter referred to as the "Board"). The Board shall consist of seven members, of whom three members, including a Chairman of the Board, shall be appointed by the President, two members by the President of the

Senate, and two members by the Speaker of the House of Representatives. The members of the Board shall be selected by virtue of their high personal integrity, their capabilities, and their experience in and expert knowledge of immigration laws and international migration problems. A vacancy in the membership of the Board shall be filled in the same manner as the original designation and appointment.

(b) The duties of the Board shall be—

(1) to promulgate, after consultation with the Attorney General, such regulations as are necessary to insure its efficient functioning under the provisions of this Act;

(2) to make a continuous study of such conditions within and without the United States, which, in the opinion of the Board, might have any bearing on the immigration policy of the United States;

(3) to consider, and after consultation with the Secretary of State, to recommend to the President, such allocation of quota immigrant visas, under section 201 (f) of the Immigration and Nationality Act, as will best fulfill the purposes of that section;

(4) to consider, and after consultation with the Secretaries of Labor, State, and Defense, to recommend to the Attorney General such criteria for admission

of immigrants under section 203 (a) (1) (A) of the Immigration and Nationality Act, as amended, and the last clause of section 203 (a) (4), as amended, as will further the policy of the United States to secure the immigration of persons of high skill, education, or training, or who are capable of performing specified functions for which a shortage of employable, willing persons exists in the United States;

(5) to study such other aspects of the Immigration and Nationality Act as the President shall assign to the Board for study, and make recommendations with respect thereto;

(6) to conduct such investigations and to hold such public and executive hearings in such places within and without the United States and at such times as the Board deems necessary.

(c) All Federal agencies shall cooperate fully with the Board to the end that it may effectively carry out its duties.

(d) Each member of the Board who is not otherwise in the service of the Government of the United States shall receive the sum of $75 for each day spent in the work of the Board, shall be paid actual travel expenses, and per diem in lieu of subsistence expenses, when away from his usual place of residence, in accordance with section 5 of the Administrative Expenses Act of 1946, as amended.

(e) Each member of the Board who is otherwise in the service of the Government of the United States shall serve without compensation in addition to that received for such other service, but while engaged in the work of the Board shall be paid actual travel expenses, and per diem in lieu of subsistence expenses, when away from his usual place of residence, in accordance with the Administrative Expenses Act of 1946, as amended.

(f) There is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, so much as may be necessary to carry out the provisions of this section.

48.

BORDER MANAGEMENT AND INTERDICTION

- AN INTERAGENCY REVIEW -

September 7, 1977

THE OFFICE OF DRUG ABUSE POLICY
THE EXECUTIVE OFFICE OF THE PRESIDENT

CHAPTER 5

OPTIONS

INTRODUCTION

The purpose of this chapter is to set forth a range of options identified by the Review Team as the most viable alternatives for achieving more effective border management. The objective in the selection of options is to be more responsive to current needs and have inherent flexibility to adjust to future needs.

The policy findings discussed in the preceding chapter should serve as general guidelines for any border management organization. The options selected range from additional resources within the existing organizational structure to a major reorganization. For example, additional resources should be allocated to reinforce selected functions even if a reorganization option is selected. In summary, the options are:

OPTION 1 - No change in organization. Budget priority to selected functions.

OPTION 2 - Limited consolidation involving specific functions.

OPTION 3 - Creation of a multi-purpose border agency (INS and Customs)

OPTION 4 - Creation of an expanded multi-purpose border agency (INS, Customs and Coast Guard)

A detailed discussion of each option follows.

OPTION 1

NO CHANGE IN ORGANIZATION. EXISTING AGENCIES CONTINUE TO PERFORM THEIR CURRENT DUTIES. ADDITIONAL BUDGET PRIORITY GIVEN TO SELECTED FUNCTIONS.

DISCUSSION OF OPTION 1

This option provides direct additional resources to meet specific needs identified during the review. In response to current National problems of aliens and drugs, there is a need for additional border resources to strengthen the inspection, patrol and air interdiction functions. This approach continues the policy of applying resources to the specific commodity or function that is deficient and responding directly to critical areas such as the illegal alien and drug smuggling problems. Budget and other resource decisions should give priority to the following:

1. Add INS and Customs inspectors to meet expanding workloads and provide for increased level of secondary inspections.
2. Increase the number of U.S. Border Patrol (INS) officers to improve the interdiction and deterrence capabilities between the ports of entry on the Southwest and Northern borders.
3. Increase the force of INS investigators to conduct interstate conspiracy investigations of alien smuggling rings.
4. Expand the capability of the Customs Air Interdiction Program to detect and intercept smuggling attempts by air.
5. Expand Customs participation in the management and use of the border intelligence center (EPIC).

ADVANTAGES

- Adds resources in areas of greatest potential for effectiveness.
- Provides additional resources to specific problem areas.
- Permits agencies to continue emphasis in area of specific expertise.

- Enhances the deterrent effect of more visible enforcement
- Least disruptive of all options in that existing organizational structures are not changed.

DISADVANTAGES

- Does not consider border management as a total package.
- Continues a form of crisis management focusing on current problems.
- Does not eliminate existing overlap and fragmentation of effort.
- Continues duplicative management and support structures.
- Higher budget priority does not insure better use of existing resources which may be available in other activities.
- Does not correct the continuing interagency competition and lack of coordination.
- Little probability of improved management or procedures.

OPTION 2

LIMITED TRANSFER AND CONSOLIDATION OF SPECIFIC FUNCTIONS AND RESPONSIBILITIES.

DISCUSSION OF OPTION 2

This option provides for substantial increase in effectiveness through consolidating responsibilities and resources for the key border enforcement functions. While this option would not result in a decrease in the number of border agencies, it would minimize jurisdictional and geographical overlap by focusing one agency on a particular aspect of border management activities. This option would result in some short-term disruption but it would provide more flexibility in meeting workloads. The major candidates for consolidation and transfer under this option are:

- Responsibility and resources committed to the inspection function at all ports of entry could be transferred to either INS or Customs.
- Responsibility and resources committed to the patrol function on the land borders between ports could be transferred to either INS or Customs.

ADVANTAGES

- Provides a single manager responsible for each of the key border functions.
- Minimizes disruption, since existing agencies would continue.
- Assigns responsibility to a single agency to focus attention and expertise within each functional area.
- Eliminates duplication in local management structure.
- Permits some flexibility in that agencies would have broader responsibilities within each function.
- Eliminates the source of existing competition and lack of cooperation within the principal operating functions.

DISADVANTAGES

- Does not view border management in its entirety.
- Would not completely eliminate competition between agencies.
- Creates high probability of conflict over how well the single manager is performing services for the other agency.
- Continued duplication on part of the management structure.
- Specific emphasis and expertise could be lost for those functional and commodity responsibilities transferred into the other agency.
- Would create some personnel turbulence and disruption during changeover.
- Likely to receive intense opposition from unions currently representing inspectors and patrol officers.
- Has been tried and failed on several previous occasions because of special interest opposition.

OPTION 3

CREATION OF A MULTI-PURPOSE BORDER MANAGEMENT AGENCY INCLUDING INS AND CUSTOMS

DISCUSSION OF OPTION 3

Option 3 represents a major change from the existing structure. It would provide greater management flexibility in the use of existing resources and would allow the consolidation of the inspection and patrol functions included in Option 2. Option 3 would result in fewer Federal agencies with the transfer of functions and resources into a consolidated multi-purpose agency. All agencies which have border enforcement responsibilities were considered in developing this option. For reasons discussed in the preceding chapter, this option sets aside consideration of Agriculture, Public Health, Fish and Wildlife and supporting agencies in favor of correcting the fundamental problem of the overlap and duplication between the two principal border enforcement agencies, INS and Customs. If these two agencies were transferred into a new border management agency, it would provide the basic foundation for a full service organization which might expand later to include secondary inspection functions performed by such agencies as the Fish and Wildlife Service, Agriculture, and Public Health.

Option 3 focuses on the transfer of all functions and personnel of INS and Customs, as well as the management of the border support function within the El Paso Intelligence Center. Consideration of Option 3 included:

1. Which agencies and functions should be involved.
2. How such a transfer would be handled to minimize opposition and turbulence associated with the organizational changes.
3. Which Cabinet department should be responsible for the new agency.

Many of the current problems are tied closely to the existing organizations. The border agencies have a long history of service to the United States. Tradition should not be lost through merger of one into the other. Any reorganization effort should provide for the continuation of special expertise where necessary to enforce specific laws and regulations.

The Review Team selected the following set of agencies an conditions to be the most practical approach to improving effectiveness through reorganization:

1. INS and Customs resources and functions should be joined together under single management. Management of the border interdiction portion of the El Paso Intelligence Center (EPIC) should be assumed by the single border management agency.

2. Rather than specify a date certain for the disestablishment of INS and Customs, the consolidation should be accomplished over a specified period of time and under the control of the single manager ultimately responsible for the new organization. Accordingly, the reorganization should provide for an umbrella management structure to direct the new organization and for a special transition staff within the new agency to accomplish the reorganization

3. As previously stated, the reorganization should not be considered as a merger of INS into Customs or vice versa. It should be considered as creation of a new agency with the virtues of both organizations. Along these lines, a proposed name for the new agency might be the U.S. Customs and Immigration Service.

4. Both Customs and INS should continue their current organizational structure at the transfer. Priorities for internal reorganization and consolidation should be established and a target date should be specified for the initial consolidation of selected functions. The following functions should be considered by the new agency for early consolidation:

   A. Primary inspection at all ports.

   B. Patrolling of the land borders.

   C. Operational support functions, particularly communications and computer systems.

   D. Management structures and administrative support.

5. The new Director should be required to report to the President and to the Congress at the end of 18 months on the accomplishments during the transition period and the plan for the next phase.

6. In determining the appropriate Cabinet department for a consolidated border enforcement agency, the most likely candidates are the Department of Justice and the Department of the Treasury. The review suggests that the principal considerations should be the size and nature of the border presence, the relative strength of each agency's ties to its current department, the relative contribution to control over entry and the potential impact on the revenue function.

Viewing Option 3 and an appropriate implementation process as a package, the advantages and disadvantages are:

ADVANTAGES

- Provides central management for principal border enforcement functions.
- Eliminates existing overlap, duplication and fragmentation of effort.
- Recognizes the interrelationships of border management functions; i.e., inspection, patrol, revenue collection and support services.
- Responds to current problems of interagency coordination, competition and parochialism.
- Provides flexibility of a multi-purpose organization in responding to a variety of both transitory and long-term problems.
- Provides opportunity to provide better services to the public.
- Better utilization of Federal resources.
- Reduces the number of Federal agencies.
- Does not disrupt those areas which were not identified as problems, e.g., Agriculture, Coast Guard, etc.

DISADVANTAGES

- Possible reduction in effectiveness during reorganization period.
- Generates some personnel turbulence particularly at mid-level and senior management as duplicate organizations are merged.
- Larger organization may present more complex internal management problems.
- Change may be opposed by various special interest groups.

OPTION 4

CREATION OF AN EXPANDED MULTI-PURPOSE BORDER MANAGEMENT AGENCY WHICH INCLUDES INS, CUSTOMS, AND THE U.S. COAST GUARD

DISCUSSION OF OPTION 4

Option 4 is an expanded version of Option 3 which provides a more comprehensive border management agency. It goes beyond control over entry to consolidate management of the major Federal resources involved in control of the borders and U.S. waters forming the perimeters of the United States.

As in Option 3, agencies with minor presence and support responsibilities are set aside. Options 3 and 4 both provide for the elimination of overlap and duplication between INS and Customs. Option 4 greatly expands the size and responsibilities of the new organization to include the broad responsibility of the Coast Guard for the seas surrounding the United States. Currently, the Coast Guard is responsive to the support requirements of border law enforcement agencies and coordinates directly with the agencies involved. However, border law enforcement was found to be a relatively small portion of the Coast Guard's total responsibilities.

Option 4 requires the same considerations as Option 3 for implementation regarding INS and Customs. It assumes that the Coast Guard would remain a separate entity within the border management agency to facilitate its transfer for national security purposes in time of war. A logical alternative to Option 4 might be to include the U.S. Coast Guard in the same department as the new border management agency. Assuming an appropriate implementation process, Option 4 presents the following advantages and disadvantages.

ADVANTAGES:

The advantages described in Option 3 also apply to the expanded multi-purpose border management agency. The principal advantages which would result from such a consolidation are:

- Places Federal responsibility for the entire perimeter of the U.S., both borders and U.S. waters, in a single organization.

- Likely to enhance the priority of the border law enforcement role within the U.S. Coast Guard.
- Significant increase in the total amount of resources within the border management agency.
- Possible elimination of separate Customs Marine Patrol activities.

DISADVANTAGES:

The disadvantages identified under Option 3 would also appl if the U.S. Coast Guard were included. Additional disadvantages are:

- Increased emphasis on border law enforcement could detract from the safety and other non-law enforcement responsibilities of the U.S. Coast Guard.
- The large size of the Coast Guard and its broad range of responsibilities could detract from the desired border law enforcement orientation of the remainder of the border management agency.

CHAPTER 6

CONCLUSIONS AND RECOMMENDATIONS

A. GENERAL

As the last step in the process of developing this report, the preceding chapters were furnished to the involved agencies and departments for review and comment. Upon receipt of the comments, they were given careful consideration and appropriate changes were made to insure that the report accurately reflects the intent of the Review Team.

The responses from the departments and agencies are attached as appendices to this report. They are included in their entirety with the exception of the remarks from the Department of Agriculture. The Agriculture comments were in the form of notations on the original draft and have been incorporated in the final report.

The comments acknowledge the existence of overlap and duplication and the need for some consolidation of effort. However, the comments reflect different opinions regarding which Cabinet department should receive the new agency. Further, other questions are raised regarding Federal law enforcement in general which are beyond the scope of this review.

The President's Reorganization Project in the Office of Management and Budget has the ultimate responsibility for developing reorganization plans in conjunction with the overall reorganization study of the Federal Government. Therefore, this report is intended to provide OMB with a current evaluation of and recommendations regarding border management. The Office of Drug Abuse Policy will assist OMB in developing any specific reorganization plan related to this review. Additionally, the report will be distributed to the participating departments and agencies and will be used in developing a new Federal drug abuse strategy.

B. CONCLUSIONS OF THE REVIEW TEAM

The Review Team discussed the entire set of comments received from the departments and agencies. The objective of a long-term solution to observed problems of lack of central management, overlap of responsibilities, and duplication of effort in border management was reaffirmed and the Review Team findings are:

1. The current organizational structure was determined to be the underlying cause of the majority of current operating problems. Therefore, the solution to existing border management problems lies in a revised management structure which can achieve maximum effectiveness with available resources, respond to changing priorities, and provide adequate border control as well as better service to the public.

2. Any major change in organization must be planned to provide clear responsibility for the result. The need for long-term effectiveness was weighed against potential disruption in on-going efforts. The first phase of any proposed reorganization should be directed at correcting the fundamental problems underlying the entire area of border management. From this basic foundation, border management should evolve toward further improvements in effectiveness and efficiency.

3. The basic causes of lack of coordinated border management can be eliminated by consolidating the principal border functions in one agency. By reducing the requirement for interagency and interdepartmental coordination, agency operating policies will be more responsive to the total Federal interests. It would also allow consolidation of selected management and support functions which should create significant savings.

4. The Coast Guard should not be included within a consolidated border management agency. However, the option of including the Coast Guard in the same department was not eliminated from consideration. The President's Reorganization Project has indicated that further consideration of the relative priorities of the Coast Guard's law enforcement functions may be warranted.

5. A continuing overview mechanism should be established within the Executive Office to develop a long-range border management plan and necessary policies to insure that border operations are supportive of all Federal programs. The overview mechanism would also be useful during the transition period for any reorganization effort.

6. In addition, there should be immediate action to increase resources available to the functions of inspection, patrol of land borders and adjudication.

C. RECOMMENDATIONS

The Review Team makes the following recommendations:

-- A multi-purpose border management agency should be created by consolidating INS and Customs in a new agency (Option 3).

-- An appropriate reorganization plan should be developed by the President's Reorganization Project to include placement of the consolidated border management agency in a Cabinet department consistent with overall government reorganization planning.

-- The emphasis and direction of the reoganization planning should be to provide the optimum organization for long term effectiveness in overall border control. This approach enhances control over all the border threats (drugs, aliens, loss of revenue, gun smuggling, etc.).

-- Consolidation of the agencies and functions should be achieved through an umbrella management concept. The reorganizaton plan should provide a set of initial priorities, but allow the new Director some flexibility in determining the internal structure of the new agency. The following functions should receive high priority for early consolidation.

1. Primary inspection at all ports.
2. Patrolling of the land borders.
3. Operational support, particularly communications and computer systems.
4. Management structure and administrative support.